SB 658 by **Albritton**; (Identical to H 00207) Acquisition of Water and Wastewater Systems

565252	A		S	L	IT, Braynon	Before L.20:	02/10 12:13 PM

SB 1244 by **Albritton**; (Compare to CS/H 01271) State Workforce Development Boards

SB 776 by **Perry**; (Identical to H 01399) Florida Real Estate Appraisal Board

837646	A		S	RCS	IT, Gibson	Delete L.32:	02/11 08:32 AM

SB 1268 by **Gruters**; Capital Investment Tax Credit

SB 1084 by **Diaz (CO-INTRODUCERS) Montford**; (Similar to CS/CS/H 00209) Emotional Support Animals

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

~~283054~~	A		S	WD	IT, Brandes	btw L.1035 - 1036:	02/10 03:53 PM
~~974940~~	A		S	WD	IT, Brandes	btw L.1035 - 1036:	02/10 03:53 PM
~~261994~~	A		S	L WD	IT, Brandes	btw L.1035 - 1036:	02/10 03:53 PM

SPB 7052 by **IT**; Office of Public Counsel

SB 1352 by **Brandes**; (Compare to CS/H 00395) Transportation Companies

817654	D		S	RS	IT, Brandes	Delete everything after	02/11 05:12 PM
506848	SD		S	L RCS	IT, Brandes	Delete everything after	02/11 05:12 PM
184186	ASA		S	L RCS	IT, Farmer	Delete L.231 - 244:	02/11 05:12 PM

SB 1870 by **Hutson**; (Compare to CS/H 01391) Technological Development

427788	D		S	RS	IT, Hutson	Delete everything after	02/12 11:09 AM
635976	SD		S	RCS	IT, Hutson	Delete everything after	02/12 11:09 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

INNOVATION, INDUSTRY AND TECHNOLOGY
Senator Simpson, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Monday, February 10, 2020
TIME: 1:30—3:30 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Building

MEMBERS: Senator Simpson, Chair; Senator Benacquisto, Vice Chair; Senators Bracy, Bradley, Brandes, Braynon, Farmer, Gibson, Hutson, and Passidomo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 658** Albritton (Identical H 207)	Acquisition of Water and Wastewater Systems; Authorizing certain water and wastewater utilities to establish a rate base value by using the fair market value when acquiring a utility system; establishing a procedure to determine the fair market value; specifying the contents required for an application to the Public Service Commission for approval of the rate base value of the utility system, etc. IT 02/10/2020 Temporarily Postponed AEG AP	Temporarily Postponed
2	**SB 1244** Albritton (Compare CS/H 1271)	State Workforce Development Boards; Defining the terms “for cause” and “state board”; replacing CareerSource Florida, Inc., with the state board or the Department of Economic Opportunity in provisions relating to the implementation of the federal Workforce Innovation and Opportunity Act; revising provisions relating to the operation of CareerSource Florida, Inc.; authorizing a chief elected official for a local workforce development board to remove certain persons from the board for cause; revising authority relating to the Workforce Training Institute, etc. CM 01/21/2020 Favorable IT 02/10/2020 Favorable RC	Favorable Yeas 8 Nays 1
3	**SB 776** Perry (Identical H 1399)	Florida Real Estate Appraisal Board; Revising the composition of the board, etc. IT 02/10/2020 Fav/CS CM RC	Fav/CS Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1268** Gruters (Compare CS/S 1642)	Capital Investment Tax Credit; Providing a credit against the corporate income tax, the sales and use tax, or a stated combination of the two taxes to a qualifying business that establishes a qualifying project for the creation of intellectual property which meets certain capital investment criteria; authorizing the carryover or transfer of credits, subject to certain conditions, etc. IT 02/10/2020 Temporarily Postponed FT AP	Temporarily Postponed
5	**SB 1084** Diaz (Similar CS/CS/H 209, Compare H 49)	Emotional Support Animals; Prohibiting discrimination in the rental of a dwelling to a person with a disability or a disability-related need who has an emotional support animal; prohibiting a landlord from requiring such person to pay extra compensation for such animal; prohibiting the falsification of written documentation or other misrepresentation regarding the use of an emotional support animal; specifying that a person with a disability or a disability-related need is liable for certain damage done by her or his emotional support animal, etc. AG 01/14/2020 Favorable IT 02/03/2020 Not Considered IT 02/10/2020 Favorable RC	Favorable Yeas 10 Nays 0
6	**SB 912** Diaz (Similar CS/CS/H 689, Compare CS/CS/H 623, CS/S 1154)	Department of Business and Professional Regulation; Requiring that certain reports relating to the transportation or possession of cigarettes be filed with the Division of Alcoholic Beverages and Tobacco through the division's electronic data submission system; renaming the Florida State Boxing Commission as the Florida Athletic Commission; revising requirements for issuing special licenses to certain food service establishments; providing the circumstances under which a person is delinquent in the payment of an assessment in the context of eligibility for membership on certain condominium boards, etc. IT 02/03/2020 Not Considered IT 02/10/2020 Favorable CA AP	Favorable Yeas 10 Nays 0

Consideration of proposed bill:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SPB 7052**	Office of Public Counsel; Providing term limits for the Public Counsel; providing for the appointment and removal of the Public Counsel; requiring the Committee on Public Counsel Oversight to receive applications, conduct interviews, and appoint a Public Counsel by a specified date every 4 years; providing for the filling of vacancies, etc.	Submitted and Reported Favorably as Committee Bill Yeas 6 Nays 3
8	**SB 1352** Brandes (Compare CS/H 395, CS/H 1039)	Transportation Companies; Defining the term "transportation network company digital advertising device"; deleting for-hire vehicles from the list of vehicles that are not considered transportation network company (TNC) carriers or are not exempt from certain registration; authorizing TNC drivers or their designees to contract with a company for the installment of TNC digital advertising devices; requiring companies operating such devices to allocate a specified percentage of advertisement inventory to certain organizations, etc. IS 01/27/2020 Favorable IT 02/10/2020 Fav/CS RC	Fav/CS Yeas 9 Nays 1
9	**SB 1870** Hutson (Compare CS/H 1391, CS/H 1393, CS/H 1395, Linked S 1872, S 1874)	Technological Development; Renaming the Division of State Technology within the Department of Management Services; establishing the Florida Digital Service within the department; requiring the Florida Digital Service to develop an enterprise architecture for all state departments and agencies; creating the Financial Technology Sandbox Program, etc. IT 02/10/2020 Fav/CS BI AP	Fav/CS Yeas 6 Nays 4
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Innovation, Industry, and Technology

BILL:	SB 658
INTRODUCER:	Senator Albritton
SUBJECT:	Acquisition of Water and Wastewater Systems
DATE:	February 7, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	**Pre-meeting**
2.			AEG	
3.			AP	

I. Summary:

SB 658 creates a process by which a utility acquiring an existing utility system may seek to establish a rate base value (the value upon which rates are set) for the acquired utility system based on the fair market value of the utility system instead of the system's original cost at the time it was placed into service.

The process is available only to acquiring utilities that provide water and wastewater services to more than 10,000 customers and are engaged in a voluntary and mutually agreeable acquisition of a water and wastewater system.

To enable the process, the Public Service Commission (PSC or commission) is required to establish a list of licensed appraisers, and the prospective buyer and prospective seller each select from that list (and individually pay) an appraiser to represent their interests. The prospective buyer and prospective seller jointly retain a licensed engineer to conduct an assessment of the tangible assets of the utility system to be used by the two appraisers in determining the fair market value of the system. Each appraiser determines the fair market value using the Uniform Standards of Professional Appraisal Practice, employing cost, market, and income approaches in assessing the value. For ratemaking purposes, the fair market value is the average of the two appraisals.

The acquiring utility's application to the commission for approval of the rate base value of the utility system to be acquired must contain specified information.

The acquiring utility may include in the cost of the acquired utility system reasonable fees paid to the appraisers, if approved by the commission, and reasonable transaction and closing costs incurred by the acquiring utility. The rate base value of the acquired utility system is equal to the lesser of the purchase price negotiated between the parties to the sale or the fair market value, plus the authorized fees and costs.

If the application complies with these requirements, the commission must issue a final order approving or denying the application within eight months after the date on which the application was filed.

Notwithstanding any of these provisions, the commission retains its authority to set rates for the acquired utility system in future rate cases and may classify the acquired utility system as a separate entity for ratemaking purposes, consistent with the public interest.

The commission is required to adopt rules to implement the bill.

The bill takes effect July 1, 2020.

II. Present Situation:

The Florida Public Service Commission has exclusive jurisdiction over each water and wastewater utility with respect to its service and rates.[1] However, the statutes also provide exclusions from commission jurisdiction. The two most significant exclusions relate to government utilities and to counties that have opted out of commission jurisdiction. The statutes expressly exempt utility systems owned, operated, managed, or controlled by governmental authorities, including water or wastewater facilities operated by private firms under privatization contracts, and nonprofit corporations formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility.[2] The statutes also authorize a county to exclude itself from commission regulation, by resolution or ordinance, thereby reserving to itself the regulation of water and wastewater utilities that are completely within the county's boundaries;[3] the commission retains exclusive jurisdiction over all utility systems whose service crosses county boundaries, except for utility systems that are subject to interlocal utility agreements.[4] As of December 2018, the commission had jurisdiction over 150 investor-owned water and/or wastewater utilities in 38 counties.[5]

The commission sets rates for all water and wastewater utilities within its jurisdiction. The rates must be "just, reasonable, compensatory, and not unfairly discriminatory." As to the "compensatory" aspect of the rates, the commission is required, in each rate-setting proceeding, to consider "the cost of providing the service, which shall include, but not be limited to, debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service."[6]

No utility may sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without the approval of the commission after a

[1] Section 367.011(2), F.S.
[2] Section 367.022(2), F.S.
[3] Section 367.171, F.S.
[4] Section 367.171(7), F.S.
[5] Florida Public Service Commission, *Facts and Figures of the Florida Utility Industry*, p. 31 (Jun. 2019), available at http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/June%202019.pdf.
[6] Section 367.081, F.S.

determination that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility. Except for any sale, assignment, or transfer to a governmental authority, the commission may, by order entered during the approval proceeding, establish the rate base for a utility or its facilities or property.[7]

The commission has consistently interpreted the "investment of the utility" to be the original cost of the property when first dedicated to public service.[8] This original cost of acquiring an asset and placing it into service for first utility use includes the direct costs of acquiring the asset and the cost of labor, materials, and associated costs of installation to prepare the asset for first utility use. When an asset is acquired that is already in public service, the original cost of the asset is recorded as part of the in-service infrastructure, and the historic accumulated depreciation is charged to the accumulated depreciation account.[9] The depreciated original cost, or net book value, is the value of an existing utility's rate base.[10] Additional capital expenditures through expansion of the system or new infrastructure for the initial system add to the investment of the utility and thus to the net book value.

If the purchase price is different from the net book value, the acquiring utility may petition for an acquisition adjustment. If the purchase price is higher than the net book value, the utility seeks a "positive acquisition adjustment" to increase the rate base. A positive acquisition adjustment may not be included in rate base, however, absent proof of extraordinary circumstances such as:

- Anticipated improvements in quality of service;
- Anticipated improvements in compliance with regulatory mandates;
- Anticipated rate reductions or rate stability over a long-term period; or
- Anticipated cost efficiencies.[11]

III. Effect of Proposed Changes:

The bill creates a process by which a utility acquiring an existing utility system may seek to establish a rate base value (the value upon which rates are set) for the acquired utility system based on the fair market value of the utility system instead of the system's original cost at the time it was placed into service.

The process is available only to acquiring utilities that provide water and wastewater services to more than 10,000 customers and are engaged in a voluntary and mutually agreeable acquisition of a water and wastewater system.

To enable the process, the commission is required to establish a list of licensed appraisers, and the prospective buyer and prospective seller each select from that list (and individually pay) an appraiser to represent their interests. The prospective buyer and prospective seller jointly retain a licensed engineer to conduct an assessment of the tangible assets of the utility system to be used

[7] Section 367.071, F.S.
[8] Florida Public Service Commission, *Agency Analysis of 2020 House Bill 207*, p. 1 (Jan, 6, 2020) (on file with the Senate Committee on Innovation, Industry, and Technology).
[9] Rule 25-30.140 (1)(r), F.A.C.
[10] *Supra*, note 8.
[11] Rule 25-30.0371(2), F.A.C.

by the two appraisers in determining the fair market value of the system. Each appraiser determines the fair market value using the Uniform Standards of Professional Appraisal Practice, employing cost, market, and income approaches in assessing the value.[12] The original source of funding for the utility system being acquired is not relevant to an evaluation of fair market value. For ratemaking purposes, the fair market value is the average of the two appraisals.

The acquiring utility's application to the commission for approval of the rate base value of the utility system to be acquired must contain the following:

- The contract of sale;
- The licensed engineer's assessment of tangible assets;
- Each deficiency identified by the engineering assessment and a three-year plan for prudent and necessary infrastructure improvements;
- Copies of the appraisals performed by the appraisers;
- The average of the appraisals, which shall constitute the fair market value of the system;
- The estimated value of fees and transaction and closing costs to be incurred by the acquiring utility;
- The projected rate impact for the selling utility's customers for the next five years; and
- A tariff, including rates equal to the rates of the selling utility.

The acquiring utility may include in the cost of the acquired utility system:

- Reasonable fees paid to the appraisers, if approved by the commission; and
- Reasonable transaction and closing costs incurred by the acquiring utility.

The rate base value of the acquired utility system, which must be reflected in the acquiring utility's next general rate case for ratemaking purposes, is equal to the lesser of the purchase price negotiated between the parties to the sale or the fair market value, plus the authorized fees and costs.

If the application complies with these requirements, the commission shall issue a final order approving or denying the application within eight months after the date on which the application was filed. An order approving an application must determine the rate base value of the acquired utility system for ratemaking purposes in a manner consistent with these provisions.

Notwithstanding any of these provisions, the commission retains its authority to set rates for the acquired utility system in future rate cases and may classify the acquired utility system as a separate entity for ratemaking purposes, consistent with the public interest.

The commission is required to adopt rules to implement this section.

The bill takes effect July 1, 2020.

[12] The cost approach considers the current cost of reproducing or replacing a building, minus an estimate for depreciation, plus the value of the land (and entrepreneurial incentive, if applicable). The market (sales comparison) approach considers the value indicated by recent sales of comparable properties on the market. The income approach considers the value that the property's net earning power will support. *See* The Appraisal Foundation, *Understanding the Appraisal*, https://www.appraisalinstitute.org/assets/1/7/understand_appraisal_1109_(1).pdf (last visited Jan. 21, 2020).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill's full fiscal impact on ratepayers of an acquiring utility is uncertain, however, they likely will have higher rates due to the following factors:

- As identified in the commission's analysis of the bill:[13]
  - Small utilities that are acquired will likely have higher valuations, increasing the resulting purchase price; and
  - Each acquisition will also have the added costs for contracting two appraisers;[14] and
- In each acquisition, the acquiring utility may include all reasonable transaction and closing costs.

The commission analysis also identifies a potential cause for additional rate increases: "The bill could encourage larger utilities to acquire smaller systems, potentially resulting in better access to low cost capital and improved infrastructure."[15] If such improvements

[13] Florida Public Service Commission, *Agency Analysis of 2020 House Bill 207*, p. 4 (Jan, 6, 2020) (on file with the Senate Committee on Innovation, Industry, and Technology).
[14] While there would also be additional costs for the licensed engineer's assessment of tangible assets of the utility system, the bill does not provide for recovery of these costs.
[15] *Supra*, note 13, at 2.

are made, the capital expenditures would increase rate base and, in turn, customers' rates, on top of any rate increase due to a higher acquisition price and cost.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Appraisal and Real Property

The bill requires that each appraiser determine the fair market value of the utility system being acquired "using the Uniform Standards of Professional Appraisal Practice, employing cost, market, and income approaches in assessing the value." An industry publication summarizes these approaches as follows:

> The cost approach considers the current cost of reproducing or replacing a building, minus an estimate for depreciation, plus the value of the land (and entrepreneurial incentive, if applicable). The market (sales comparison) approach considers the value indicated by recent sales of comparable properties on the market. The income approach considers the value that the property's net earning power will support.[16]

Some of value considerations used in some of these approaches may not be appropriate for use in these circumstances. For example, the publication states the following:

> Highest and best use is a critical step in the development of a market value opinion. In highest and best use analysis, the appraiser considers the use of the land as though it were vacant and the use of the property as it is improved. To qualify as the highest and best use, a use must satisfy four criteria: it must be legally permissible, physically possible, financially feasible and maximally productive. The highest and best use is selected from various alternative uses.[17]

An older utility may have deteriorated infrastructure but the real property on which it sits may have appreciated significantly. As it is being purchased for continued use as a utility, however, it appears that applying a real estate value based on use as a site for a theme park, condominium, or other such use is unlikely to result in rates that are "just, reasonable, compensatory, and not unfairly discriminatory."

[16] *See* The Appraisal Foundation, *Understanding the Appraisal*, https://www.appraisalinstitute.org/assets/1/7/understand_appraisal_1109_(1).pdf (last visited Jan. 21, 2020).
[17] *Id*.

Commission Comments

The commission analysis on the bill raises the following points:[18]

> The bill states that it applies exclusively to utilities that "regularly provide water and wastewater services to more than 10,000 customer connections." At this time, only three Commission-regulated utilities are of sufficient size to qualify under the bill.
>
> Unlike the Department of Business and Professional Regulation that regulates appraisers, the Commission has no expertise in property appraisal. An alternative may be to have a more appropriate agency prepare and maintain the list of appraisers required by paragraph (2)(a).

VIII. Statutes Affected:

This bill creates section 367.0712 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.

[18] Florida Public Service Commission, Agency Analysis of 2020 House Bill 207, p. 4 (Jan, 6, 2020) (on file with the Senate Committee on Innovation, Industry, and Technology).

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LEGISLATIVE ACTION

Senate . House

. . . . . .

The Committee on Innovation, Industry, and Technology (Braynon) recommended the following:

Senate Amendment (with title amendment)

Before line 20
insert:
Section 1. Present subsections (2), (3), and (4) of section 180.191, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, a new subsection (2) is added to that section, and subsection (1) of that section is amended, to read:
180.191 Limitation on rates charged consumer outside city

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limits.—

(1) Except as provided in subsection (2), any municipality within the state operating a water or sewer utility outside of the boundaries of such municipality shall charge consumers outside the boundaries rates, fees, and charges determined in one of the following manners:

(a) It may charge the same rates, fees, and charges as consumers inside the municipal boundaries. However, in addition thereto, the municipality may add a surcharge of not more than 25 percent of such rates, fees, and charges to consumers outside the boundaries. Fixing of such rates, fees, and charges in this manner does ~~shall~~ not require a public hearing except as may be provided for service to consumers inside the municipality.

(b) It may charge rates, fees, and charges that are just and equitable and that ~~which~~ are based on the same factors used in fixing the rates, fees, and charges for consumers inside the municipal boundaries. In addition thereto, the municipality may add a surcharge not to exceed 25 percent of such rates, fees, and charges for said services to consumers outside the boundaries. However, the total of all such rates, fees, and charges for the services to consumers outside the boundaries may ~~shall~~ not be more than 50 percent in excess of the total amount the municipality charges consumers served within the municipality for corresponding service. ~~No~~ Such rates, fees, and charges may not ~~shall~~ be fixed until after a public hearing at which all of the users of the water or sewer systems; owners, tenants, or occupants of property served or to be served thereby; and all others interested shall have an opportunity to be heard concerning the proposed rates, fees, and charges. Any

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change or revision of such rates, fees, or charges may be made in the same manner as such rates, fees, or charges were originally established, but if such change or revision is to be made substantially pro rata as to all classes of service, both inside and outside the municipality, no hearing or notice shall be required.

(2) Any municipality within the state operating a water or sewer utility providing service to customers in another recipient municipality from infrastructure located in the recipient municipality shall charge the customers in the recipient municipality the same rates, fees, and charges as it does the customers inside its own municipal boundaries.

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

And the title is amended as follows:

Delete lines 2 - 3

and insert:

An act relating to water and wastewater systems; amending s. 180.191, F.S.; requiring a municipality to charge customers receiving its utility services outside the municipal boundaries the same rates, fees, and charges as it charges customers within the municipality under certain circumstances; creating s. 367.0712, F.S.; authorizing

The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry, and Technology

Subject: Committee Agenda Request

Date: February 5, 2020

I respectfully request that **Senate Bill #658**, relating to Acquisition of Water and Wastewater Systems, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ben Albritton
Florida Senate, District 26

File signed original with committee office

S-020 (03/2004)

Date: _____

Agency Affected:	Public Service Commission	Telephone: 413.6524
Program Manager:	Katherine Pennington	Telephone: 413.6960
Agency Contact:	Katherine Pennington	Telephone: 413.6960
Respondent:		Telephone: 413.6092

RE: BILL # SB 658

I. SUMMARY:

SB 658 creates Section 367.0712, Florida Statutes (F.S.), to authorize a public water or wastewater utility to establish the rate base of a purchased system it acquires using the fair market value of the acquired utility instead of the system's original cost. The Public Service Commission (Commission) will maintain a list of licensed appraisers. The bill provides requirements for determination of fair market value. The bill also provides the information the acquiring utility must provide to the Commission. The Commission must make a final determination of the value within six months after the date the application is filed. This bill applies to utilities that provide services to more than 10,000 customers. The bill takes effect July 1, 2020.

II. PRESENT SITUATION:

Pursuant to Section 367.011, F.S., the Commission has exclusive jurisdiction over each water and wastewater utility with respect to its authority, service, and rates. Pursuant to Section 367.021(12), F.S., a "utility" means a water or wastewater system providing service to the public for compensation, except as provided in Section 367.022, F.S. (setting forth a number of regulatory exemptions). Further, the Commission does not regulate utilities in counties that have exempted themselves from Commission jurisdiction pursuant to Section 367.171, F.S.

The Commission currently establishes the value of an existing utility's rate base using original cost. Rule 25-30.115, Florida Administrative Code (F.A.C.), requires that all water and wastewater utilities shall, effective January 1, 1998, maintain their accounts and records in conformity with the 1996 National Association of Regulatory Utility Commissioners (NARUC) Uniform Systems of Accounts (USOA) adopted by NARUC, which is incorporated by reference in this rule. The NARUC USOA states that "'original cost', as applied to utility plant, means the cost of such property to the person first devoting it to the public service." Section 367.081(2)(a)1., F.S., states that the Commission shall consider. . . "a fair return on the investment of the utility in property used and useful in the public service." The Commission has consistently interpreted the "investment of the utility" contained in Section 367.081(2)(a)1., F.S., to be the original cost of the property when first dedicated to public service. Rule 25-30.140, F.A.C., states, "[i]n the event that an asset is acquired that is already in public service, the original historic cost of the asset should be recorded in plant in service." Under original cost ratemaking, the value of a utility's rate base is determined using the depreciated original cost of the property devoted to the public service. By applying the required rate of return to the depreciated original cost of the property devoted to the public service, and accounting for associated operating costs and taxes, investors are provided the opportunity to recover all costs associated with the provision of utility service, including an appropriate return for placing their capital at risk. Under such a scenario, customers receive service at just and reasonable rates and the utility and its shareholders remain whole. Original cost is the basis upon which the Commission sets rates for all regulated utilities under its jurisdiction.

Rule 25-30.0371, F.A.C., codifies the Commission's current policy on acquisition adjustments for its jurisdictional water and wastewater utilities:

> For the purpose of this rule, an acquisition adjustment is defined as the difference between the purchase price of utility system assets to an acquiring utility and the net book value of the utility assets. A positive acquisition adjustment exists when the

> purchase price is greater than the net book value. A negative acquisition adjustment exists when the purchase price is less than the net book value.

Pursuant to Rule 25-30.0371(2), F.A.C.,

> A positive acquisition adjustment shall not be included in rate base absent proof of extraordinary circumstances. Any entity that believes a full or partial positive acquisition adjustment should be made has the burden to prove the existence of extraordinary circumstances. In determining whether extraordinary circumstances have been demonstrated, the Commission shall consider evidence provided to the Commission such as anticipated improvements in quality of service, anticipated improvements in compliance with regulatory mandates, anticipated rate reductions or rate stability over a long-term period, anticipated cost efficiencies, and whether the purchase was made as part of an arms-length transaction.

Pursuant to Rule 25-30.0371(3), F.A.C.,

> If the purchase price is greater than 80 percent of net book value, a negative acquisition adjustment will not be included in rate base. When the purchase price is equal to or less than 80 percent of net book value, a negative acquisition adjustment shall be included in rate base and will be equal to 80 percent of net book value less the purchase price.

Pursuant to Section 367.121(1)(b), F.S., the Commission has the authority "[t]o prescribe, by rule, a uniform system and classification of accounts for all utilities, which rules, among other things, shall establish adequate, fair, and reasonable depreciation rates and charges."

III. EFFECT OF PROPOSED CHANGES:

As previously indicated, when a larger utility acquires a smaller utility, a new rate base must be established in order to set rates for customers. SB 658 proposes for certain larger utilities that acquire smaller utilities (those acquiring utilities providing services to more than 10,000 customers) to eliminate the current "original cost" method along with the current acquisition adjustment considerations in valuing the smaller acquired utility for purposes of establishing how rates are to be established for customers of newly acquired utilities. Alternatively, SB 658 imposes a new "fair market value" (FMV) approach in establishing the value of the newly acquired utility that will be used to determine how rates are to be established for the customers of the newly acquired utility. (For those acquiring utilities who at the time of acquisition service less than 10,000 customers, the current "original cost" method would be retained.) The basis for how rates are determined is to allow recovery of all costs, including an appropriate return on investment. Under the proposed new FMV method, by establishing net book value based on a value other than original cost (which contains the primary components of rate base), the rates set for the acquired utility could in some instances significantly differ from the acquired utility's current rates because the investment in the utility under fair market value could be significantly greater.

Original cost accounting maintains that the investment value of an asset is established when the asset is put into service. By having an appraiser determine the value of the asset over time, that asset could be seen as more or less valuable based on a replacement cost, for example.

The bill could encourage larger utilities to acquire smaller systems, potentially resulting in better access to low cost capital and improved infrastructure. While these are desirable results, they are not a requirement under the bill or guaranteed to occur. The bill could also result in customer rates increasing simply due to the purchase price valuation.

Currently, a transfer of certificate application must be submitted by the purchasing entity to the Commission within 90 days of when an acquisition occurs. The application currently contains many items including the estimated net book value, purchase price, and a statement of why the acquisition is in the

public interest. SB 658 sets forth additional requirements that the purchasing utility must provide the Commission. The application would include all of the following:

- A copy of the appraisals performed by licensed appraisers.
- Any deficiencies identified by the engineering assessment and a 3-year plan for prudent and necessary infrastructure improvements.
- The projected rate impact for the selling utility's customers for the next 5 years.
- The average of the appraisals, which shall constitute the fair market value of the system.
- The assessment of tangible assets performed by the professional engineer.
- The contract of sale.
- Estimated valuation fees and transaction and closing costs incurred.
- A tariff, including rates equal to the rates of the selling utility.

The Commission has traditionally had the discretion to approve, deny, or modify any rate base items or expenses based on whether they are found to be in the public interest. However, after an acquisition is made, the bill states, "the lesser of the purchase price negotiated between the parties to the sale or the fair market value," plus reasonable fees and costs should be included in the acquiring company's next rate case. The bill does not allow the Commission the discretion to modify the fair market value determination.

The bill provides that the Commission must issue a final order approving or denying a qualifying application within six months after the application is filed. This timeline is problematic and may affect the Commission's ability to process transfers in an efficient manner within the bounds of Chapter 120, F.S. Currently, acquisition adjustments and net book value determinations are handled by way of proposed agency action with no statutory timeline, with the length of the proceeding being determined by the ability of participating utilities to provide sufficient information for a decision to be made. In order to comply with a six month time limit for the issuance of a final order, all transfers of this type will need to be set directly for a Section 120.57, F.S., administrative hearing. A hearing process may impose additional resource costs on the utilities and customer representatives, including the Office of Public Counsel.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

(in this section please provide information concerning FTEs. How many positions, if any will be necessary to enact this bill. Also, what specific positions will be needed.)

The impact on state agencies is not known at this time. It is unclear how the change to the Commission's cost for transfer and rate proceedings will be affected.

	(FY 19-20) Amount / FTE	(FY 20-21) Amount / FTE	(FY 21-22) Amount / FTE
A. Revenues			
1. Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
2. Non-Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
B. Expenditures			
1. Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
2. Non-Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

None known at this time.

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

The private sector will likely see significant new costs under this statute. Small utilities will likely see higher valuations, which will increase the purchase price of utilities; this would lead to higher rates for customers. There would also be the added costs for contracting two appraisers for each acquisition. There may be anti-competitive concerns raised by allowing some appraisers on the Commission list, but not others.

VII. LEGAL ISSUES:

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

None known at this time.

B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)?

None known at this time.

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

The bill may require all qualifying acquisitions to be processed exclusively as Section 120.57, F.S., administrative hearings. Further, customers and customer advocates may litigate the assessment of excessive rates and evaluation costs.

D. Other:

VIII. COMMENTS:

The bill states that it applies exclusively to utilities that "regularly provide water and wastewater services to more than 10,000 customer connections." At this time, only three Commission-regulated utilities are of sufficient size to qualify under the bill.

Unlike the Department of Business and Professional Regulation that regulates appraisers, the Commission has no expertise in property appraisal. An alternative may be to have a more appropriate agency prepare and maintain the list of appraisers required by paragraph (2)(a).

The bill requires the Commission to issue a final order "within 6 months after the date on which the application" is filed. An alternative may be to extend the statutory deadline to 8 months, which would enable a more efficient and timely processing of the application. Entering a final order within 8 months is consistent with the 8-month clock in the file and suspend law found in Section 367.081(6), F.S.

Prepared by: David Frank, Kristen Simmons, Bart Fletcher

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/20
Meeting Date

658
Bill Number (if applicable)

Topic Water / Wastewater

Amendment Barcode (if applicable)

Name Chris Hansen

Job Title Ballard Partners

Address 201 E. Park Ave 5th Floor
Street

Phone 850/577-0444

Tallahassee FL 32301
City *State* *Zip*

Email Chansen@ballardpartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Rural Water 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)

By Senator Albritton

26-00784-20 2020658__

A bill to be entitled

An act relating to acquisition of water and wastewater systems; creating s. 367.0712, F.S.; authorizing certain water and wastewater utilities to establish a rate base value by using the fair market value when acquiring a utility system; establishing a procedure to determine the fair market value; requiring the rate base value to be reflected in the acquiring utility's next rate case for ratemaking purposes; specifying the contents required for an application to the Public Service Commission for approval of the rate base value of the utility system; specifying duties of the commission regarding applications; specifying the commission's retained authority; providing applicability; requiring the commission to adopt rules; providing an effective date.

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

Section 1. Section 367.0712, Florida Statutes, is created to read:

367.0712 Determination of value.—

(1) When a utility acquires an existing utility system, the utility may establish a rate base value of the acquired utility system by using the fair market value of the utility system instead of the system's original cost.

(2)(a) The fair market value of a utility system to be acquired must be based on appraisals conducted by two licensed appraisers chosen from a list established by the commission.

1. One appraiser shall represent and be paid by the acquiring utility and one appraiser shall represent and be paid by the utility system being acquired.

2. Each appraiser shall determine the fair market value using the Uniform Standards of Professional Appraisal Practice, employing cost, market, and income approaches in assessing the value.

3. For ratemaking purposes, the fair market value is the average of the two appraisals.

4. The original source of funding for the utility system being acquired is not relevant to an evaluation of fair market value.

(b) The acquiring utility and utility system being acquired shall jointly retain a licensed engineer to conduct an assessment of the tangible assets of the utility system and the assessment shall be used by the two appraisers in determining the fair market value of the system.

(c) The acquiring utility may include in the cost of the acquired utility system:

1. Reasonable fees paid to the appraisers, if approved by the commission.

2. Reasonable transaction and closing costs incurred by the acquiring utility.

(d) The rate base value of the acquired utility system, which must be reflected in the acquiring utility's next general rate case for ratemaking purposes, is equal to the lesser of the purchase price negotiated between the parties to the sale or the fair market value, and the fees and costs authorized in paragraph (c).

(3) An application to the commission for approval of the rate base value of the utility system to be acquired must contain the following:

(a) Copies of the appraisals performed by the appraisers pursuant to paragraph (2)(a).

(b) Each deficiency identified by the engineering assessment conducted pursuant to paragraph (2)(b) and a 3-year plan for prudent and necessary infrastructure improvements.

(c) The projected rate impact for the selling utility's customers for the next 5 years.

(d) The average of the appraisals, which shall constitute the fair market value of the system.

(e) The assessment of tangible assets pursuant to (2)(b).

(f) The contract of sale.

(g) The estimated value of fees and transaction and closing costs to be incurred by the acquiring utility.

(h) A tariff, including rates equal to the rates of the selling utility.

(4) If the application complies with the requirements of subsection (3), the commission shall issue a final order approving or denying the application within 8 months after the date on which the application was filed. An order approving an application shall determine the rate base value of the acquired utility system for ratemaking purposes in a manner consistent with this section.

(5) Notwithstanding any provision in this section, the commission retains its authority under this chapter to set rates for the acquired utility system in future rate cases and may classify the acquired utility system as a separate entity for

ratemaking purposes, consistent with the public interest.

(6) This section applies to acquiring utilities that provide water and wastewater services to more than 10,000 customers and are engaged in a voluntary and mutually agreeable acquisition of a water and wastewater system.

(7) The commission shall adopt rules to implement this section.

Section 2. This act shall take effect July 1, 2020.

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 Innovation, Industry, and Technology

BILL:	SB 1244
INTRODUCER:	Senator Albritton
SUBJECT:	State Workforce Development Boards
DATE:	February 7, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	**Favorable**
2.	Wiehle	Imhof	IT	**Favorable**
3.			RC	

I. Summary:

SB 1244 amends the structure of Florida's Workforce Development System. The bill:

- Replaces CareerSource Florida, Inc. (CareerSource) with the state board or the Department of Economic Opportunity (DEO) in provisions relating to the implementation of the Workforce Innovation and Opportunity Act (WIOA);
- Clarifies the purpose, operation, and structure of CareerSource and the state board;
- Requires the state board, rather than CareerSource, to produce a state plan that creates an educated and skilled workforce;
- Clarifies the duties of the local workforce development boards;
- Replaces CareerSource with the state board or the DEO in provisions relating to Florida's Youth Summer Jobs Pilot Program;
- Authorizes the state board to create and administer the Workforce Training Institute;
- Restructures the organization of the one-stop delivery system;
- Replaces CareerSource with the DEO in provisions relating to workforce information systems and transitional services;
- Requires the DEO to consult with the state board in provisions relating to workforce information systems; and
- Replaces CareerSource with the state board in provisions relating to individual development.

The bill takes effect July 1, 2020.

II. Present Situation:

Florida's Workforce Development System

The federal Workforce Investment Act of 1998 (WIA) was passed by Congress in an effort to improve the quality of the nation's workforce through implementation of a comprehensive

workforce investment system.[1] The WIA required each state to establish an investment board at the state level and to also establish workforce investment boards to represent local service areas.[2] The WIA also called for the delivery of workforce development services through a system of "one-stop" centers in local communities.[3] Some key principles of the WIA were to better integrate workforce services, empower individuals, provide universal access to participants, increase accountability, and improve youth programs.[4]

In response to the WIA, Florida established a workforce development system under the Workforce Investment Act of 2000.[5] The act aimed to better connect the state's economic development strategies with its workforce development system and to implement the principles of the federal WIA.[6]

Federal Workforce Innovation and Opportunity Act of 2014

In 2014, Congress passed the Workforce Innovation and Opportunity Act (WIOA), which superseded the Workforce Investment Act of 1998.[7] The WIOA requires each state to develop a single, unified plan for aligning workforce services through the identification and evaluation of core workforce programs.[8] In general, the WIOA maintains the one-stop framework of the WIA, and encompasses provisions aimed at streamlining services, easing reporting requirements, and reducing administrative barriers.[9] The WIOA officially became effective on July 1, 2015, the first full program year after enactment.

Core Programs

The WIOA identifies four core programs that must coordinate and complement each other in a manner that ensures job seekers have access to needed resources.[10] The core programs are:

- Adult, Dislocated Worker and Youth Programs;
- Employment Services under the Wagner-Peyser Employment Act;
- Vocational Rehabilitation Services; and
- Adult Education and Literacy Activities.

Performance Measures

In an effort to promote transparency and accountability, the WIOA created a single set of common measures for the evaluation of core programs.[11] The WIOA requires performance

[1] Workforce Investment Act of 1998, 29 U.S.C. § 2801 (1998), *repealed by* Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, H.R. 803, 113th Cong. (July 22, 2014)(codified at 29 U.S.C. § 3101, et seq.).
[2] *See* 29 U.S.C. § 2821 and 29 U.S.C. § 2832 (1998).
[3] *See* 29 U.S.C. § 2841 (1998).
[4] *See* 29 U.S.C. § 2811 (1998).
[5] Chapter 2000-165, Laws of Fla.
[6] *See* s. 445.003, F.S.
[7] Workforce Innovation and Opportunity Act, 29 U.S.C. § 3101 et seq. (2014).
[8] *See* 29 U.S.C. § 3112(a).
[9] *See* 29 U.S.C. § 3111.
[10] *See* 29 U.S.C. § 3102(13).
[11] *See* 29 U.S.C. § 3141.

reports to be provided at the state, local, and trainer provider levels. The performance measures that now apply across all core programs are:

- The percentage of participants in unsubsidized employment during second quarter after exit;
- The percentage of participants in unsubsidized employment during fourth quarter after exit;
- The median earnings of participants during second quarter after exit;
- The percentage of participants who obtain a postsecondary credential or secondary school diploma within 1 year after exit;
- The achievement of measureable skill gains toward credentials or employment; and
- The effectiveness in serving employers.

State Workforce Development Plan

Using the common performance measures for core programs, the WIOA requires each state to develop and submit a unified state plan based on a 4-year strategy for workforce development.[12] The state plan must describe an overall strategy for the core programs and how the strategy will meet needs for workers, job seekers, and employers.[13] The WIOA also provides an option for states to submit a combined plan that outlines plans for the core programs along with additional workforce programs.[14]

Regional Planning and Local Workforce Development Boards

The WIOA requires states to identify regional planning areas for workforce development strategies.[15] Within each area, a local workforce development board must be established.[16] Each local workforce development board is required to coordinate planning and service delivery strategies within their area.[17] Formulated strategies are then used by the local workforce development board to develop and submit a local plan for the delivery of workforce services.[18]

One-Stop Delivery System

The WIOA aims to strengthen the one-stop delivery system by requiring each local area to have at least one comprehensive one-stop delivery provider.[19] A comprehensive one-stop delivery provider supplies physical access to services provided by core partners, as well as other mandatory partners.[20] The WIOA mandates that each partner shares in the funding of services and infrastructure costs of the one-stop delivery system.[21]

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[12] *See* 29 U.S.C. § 3112(a).
[13] *See* 29 U.S.C. § 3112(b).
[14] *See* 29 U.S.C. § 3113.
[15] *See* 29 U.S.C. § 3121.
[16] *Id*.
[17] *See* 29 U.S.C. § 3122.
[18] *See* 29 U.S.C. § 3123.
[19] *See* 29 U.S.C. § 3151.
[20] Other mandatory partners may include programs under the Older Americans Act, Adult Education and Literacy, Department of Housing and Urban Development, Social Security Act, Perkins Career and Technical Education Act, and the Community Service Block Grant Act. 29 U.S.C. § 3151(b).
[21] *See* 29 U.S.C. § 3151(2).

Florida's Implementation of The WIOA

In 2016, Florida made changes to the workforce development system to conform to the new federal guidelines established by the WIOA.[22] Under the current workforce development system, the DEO, CareerSource, and 24 local workforce development boards act as partners in administering Florida's comprehensive system for the delivery of workforce strategies, services, and programs.

The Department of Economic Opportunity

The DEO serves as Florida's lead workforce agency.[23] The DEO is responsible for the fiscal and administrative affairs of the workforce development system.[24] The DEO receives and distributes federal funds for employment-related programs to the local workforce development boards.[25] Additionally, under the direction of CareerSource, the DEO must annually meet with each local workforce development board to review the board's performance and to certify that the board is in compliance with applicable state and federal law.[26]

CareerSource Florida, Inc.

CareerSource Florida, Inc., a not-for-profit corporation, serves as Florida's *state-level* workforce development board.[27] CareerSource is responsible for the development of a 4-year plan that is consistent with the requirements of the WIAO[28] and collaborates with the DEO, the local workforce development boards, and one-stop service providers to ensure workforce services are consistent with state and local plans.[29] CareerSource also provides state-level policy direction, planning, and performance evaluation of the delivery of workforce services.[30]

Local Workforce Development Boards

Twenty-four local workforce development boards deliver Florida's workforce development services through over 100 one-stop service providers.[31] The one-stop service providers give Floridians access to available workforce services; including job placement, career counseling, and skills training.[32] Collectively, the local workforce development boards operate under a charter approved by CareerSource.[33] Each local workforce development board formulates a local budget and oversees the one-stop delivery system within its local area.[34]

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[22] Chapter 2016-216, Laws of Fla.
[23] Primarily through the Division of Workforce Services. *See* s. 20.60, F.S.
[24] Section 445.009(3)(c), F.S.
[25] *See* s. 445.003, F.S.
[26] *See* s. 445.007(3), F.S.
[27] Section 445.004(5)(a), F.S. Prior to 2014, CareerSource was known as Workforce Florida, Inc.
[28] Section 445.003(2), F.S.
[29] *See* s. 445.004, F.S.
[30] *Id*.
[31] Florida Department of Economic Opportunity, *CareerSource Florida Network Directory*, http://lcd.floridajobs.org/ (last visted Jan. 17, 2020).
[32] *See* s. 445.009, F.S.
[33] *See* s. 445.004, F.S.
[34] Section 445.007(12), F.S.

On May 15, 2019, the Acting Regional Administrator for the U.S. Department of Labor, Employment and Training Administration sent a letter to the Executive Director of the Florida Department of Economic Opportunity reporting on the comprehensive compliance review that the administration had conducted in conjunction with the Department of Economic Opportunity under the Workforce Innovation and Opportunity Act. The letter indicated that the review confirmed numerous violations of the Workforce Investment Act and the Workforce Innovation and Opportunity Act by CareerSource Tampa Bay and CareerSource Pinellas. The review confirmed that fake job placements were made, that records are falsified, and including numerous other violations of the act resulting in over $17 million in question costs subject disallowance.[35] The letter further stated:

> The improper administration of capital federal employment and training funds by the two local workforce boards led to blatant noncompliance with WIOA requirements. This was further compounded by the lack of fiduciary oversight which fostered an environment vulnerable to mismanagement, waste, fraud, and abused to occur undetected. [36]

The report issued by the administrator outlined in detail each of the 17 findings of noncompliance in three areas of concern. The letter indicated that the state was required to submit a corrective action plan and formally respond to each of the 17 findings in question costs.[37] The report further stated that "[W]hile it is appropriate for the State to allow local flexibilities, it does not appear that the State provided adequate policy guidance, training, and technical assistance to ensure that the implementation of the workforce development system was compliant with WIOA."[38]

III. Effect of Proposed Changes:

Workforce Services

Section 1 amends s. 445.002, F.S., to define the terms "for cause" and "state board."

- "For cause" includes, but is not limited to, engaging in fraud or other criminal acts, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance. The "for cause" standard is used in ch. 445, F.S., as a standard by which:
  - the Governor may remove a member of a local board; and,
  - a chief elected official may remove a member of a local board.
- "State board" means the state workforce development board established pursuant to the Workforce Innovation and Opportunity Act. The state board shall be supported by CareerSource, which works at the direction of the state board in consultation with the DEO as required by ch. 445, F.S.

[35] Available at https://assets.documentcloud.org/documents/6021994/Final-Florida-Compliance-Review-CSTB-CSP.pdf (last visited February 5, 2020).
[36] *Id.*
[37] *Id.*
[38] Finding #16: State Did Not conduct Adequate and Effective Oversight, *Compliance Review of CareerSource Tampa Bay and CareerSource Pinellas,* at p. 36, U.S. Department of Labor Employment and Training Administration, Atlanta Regional Office, May 15, 2019.

Implementation of the Federal Workforce Innovation and Opportunity Act

Section 2 makes numerous changes to the procedures relating to the implantation of the WIOA in s. 445.003, F.S.

The bill replaces CareerSource with the state board or the DEO in provisions relating to the implementation of the WIOA.

- The state board must prepare and submit a 4-year plan, consistent with the requirements of the WIOA.
- Title I, WIOA, Wagner-Peyser, and NAFTA/Trade Act funds will be expended based on the 4-year plan of the state board.
- A local workforce board must use at least 50 percent of the Title I funds for Adults and Dislocated Workers on Individual Training Accounts[39] unless a waiver is obtained from the state board.
- State administration costs include the costs of funding for the state board and state board staff; operating fiscal, compliance, and management accountability systems though the department conducting evaluation and research on workforce development activities; and providing technical and capacity building assistance to local workforce development areas at the direction of the state board.
- Individual Training Accounts and other workforce development strategies for other training is designed and tailored by the DEO in consultation with the state board.
- Individual Training Accounts for distressed urban and rural communities must be designed, adopted, and funded by the DEO in consultation with the state board.
- The state board may establish guidelines necessary to implement the Incumbent Worker Training Program.
- The DEO must maintain an Emergency Preparedness Fund from Rapid Response funds.
- All Rapid Response funds must be expended based on a plan developed by the state board in consultation with the DEO.
- The state board, in consultation with the DEO may make modifications to the state's plan, policies, and procedures to comply with federally mandated requirements the must be complied with to maintain funding.
- The state board must enter into a memorandum of understanding with the Florida Department of Education to ensure that federally mandated requirements are met and are in compliance with the state plan for workforce development.
- The state board may recommend workforce related divisions, bureaus, units, programs, duties, commissions, boards, and councils for elimination, consolidation, or privatization.

The bill makes reservation of $2 million of the Title I funds retained at the state level for the Incumbent Worker Training Program discretionary instead of mandatory.[40]

[39] Individual Training Account expenditures include tuition, books, and fees of training providers and other training services authorized by the WIOA. *See* s. 445.003, F.S.

[40] The Incumbent Worker Training Program helps workers by providing grant funding for continuing education and training of incumbent employees at existing Florida businesses. *See* s. 445.003, F.S.

The bill creates a new subsection (6) in s. 445.003, F.S., which authorizes the state board to hire a director and staff that must be authorized by the state board to work with the DEO in carrying out the functions of the WIOA.

CareerSource and the State Board

Section 3 amends s. 445.004, F.S., to revise provisions relating to the purpose, operation, and organizational structure of CareerSource and the state board.

- CareerSource must operate at the direction of the state board, and under an agreement with the DEO.
- CareerSource provides administrative support for the state board.
- The purpose of the state board is to design and implement strategies to foster Florida's workforce development system.
- CareerSource must implement the policy directives of the state board and administer state workforce development programs.
- All provisions stating that CareerSource must be governed by a board of directors are removed, and "board of directors" is replaced with the "state board."
- The state board is the board of directors of CareerSource.
- The state board is required to hire an executive director, and the executive director is the president, the chief executive officer, and an employee of CareerSource.
- The president of CareerSource serves at the pleasure of the Governor.
- The state board is authorized to provide policy direction to ensure the DEO is properly administering workforce development activities to conform to approved plans.[41]
- The DEO may consult with the state board to issue technical assistance letters on the operation of federal programs and the expenditure of federal funds by the state board or any workforce development board.[42]
    - A technical assistance letter must be in writing, posted on the DEO's website, and remains in effect until superseded or terminated.
- The state board is authorized to notify the Governor and the DEO of statewide or local workforce development and training needs that may require policy changes or an update to the state plan.
- The state board must have a policy that all resources and equipment purchased for training WIOA clients be available for use at all times by eligible populations.
- The state board may make expenditures to recognize performance and for promotional items.
- The state board must submit a complete and detailed annual report by December 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

[41] Authorized workforce development activities include the following: Programs authorized under Title I of the WIOA, the Wagner-Peyser Act of 1993, Title II of the Trade Act of 2002, employment and training activities carried out under funds awarded to Florida by the United States Department of Housing and Urban Development, welfare transition services funded by the Temporary Assistance for Needy Families Program, the Florida Bonding Program, the Food Assistance Employment and Training Program, the Quick-Response Training Program, and the Work Opportunity Tax Credit. *See* s. 445.004, F.S.
[42] The bill establishes that a technical assistance letter is not a declaratory statement issued pursuant to s. 120.565, F.S., an order issued pursuant to s. 120.569, F.S., or a rule of general applicability under s. 120.54, F.S. Section 120.53, F.S., does not apply to technical assistance letters.

- The Auditor General is authorized to conduct an audit of the state board and CareerSource, or the programs and entities created by the state board.
- The state board must establish uniform performance accountability measures that monitor the performance of the state and local workforce development boards in achieving the workforce development strategy.
  - The performance accountability measures of success that are adopted by the state board, or the local workforce development boards must provide an equitable comparison of the relative success or failure of any service provider.
- The workforce development strategy for Florida must be designed by the state board, in consultation with the DEO, and approved by the Governor.
- The workforce development system must encourage local design and control of service delivery and targeted activities.
- The state board, in consultation with the DEO, must ensure that local workforce development boards have a valid membership and have developed an adequate plan.

The bill establishes that the state board must establish proper incentives, outline rewards for successful job placements, and institute collaborative approaches among local service providers.

The bill clarifies that CareerSource, under the direction of the state board, must enter into an agreement with Space Florida and collaborate with vocational institutes, community colleges, colleges, and universities in Florida to develop and implement a workforce development strategy.

State Plan for Workforce Development

Section 4 amends s. 445.006, F.S., to require the state board, rather than CareerSource, to take actions relating to the state plan for workforce development.

The bill provides that the state board in conjunction with state and local partners, must produce a state plan that creates an educated and skilled workforce, as well as develop strategic planning elements and operational planning elements for the state plan.

Local Workforce Development Boards

Section 5 amends s. 445.007, F.S., to clarify the structure and duties of the local workforce development boards.[43]

- The state board is authorized to waive the requirement that a local board must appoint a representative of a private education provider to the local board, as long as, a local workforce board requests a waiver, and it is demonstrated that a representative of a private education provider does not exist in the region.
- The DEO must assign staff to meet with each local workforce development board annually to review performance and compliance with state and federal law.
- The DEO approves a local workforce development board's administrative entity.

[43] The bill also refers to "local workforce development boards" as "local boards."

- The DEO, in conjunction with the state board, must provide a training program for the local workforce development boards to familiarize them with the state's workforce development goals.
- The state board is required to create procedures for the local workforce development boards to request permission to operate under s. 445.007, F.S.
- The local workforce development boards are required to adopt a committee structure consistent with state policies and federal law established by the state board.
- The local workforce development boards are required to apply the procurement and expenditure procedures required by federal law, as well as, policies created by the DEO and the state board.
- Unless authorized by state law, the state board and the DEO may not use state and federal funds provided to the local workforce development boards to pay for food or beverages for board members, staff, or employees of the local workforce development boards.
- The DEO must monitor and provide fiscal or programmatic guidance to the state board, CareerSource, and all workforce development boards.
- A local workforce development board is required to receive approval from the DEO before contracting with a member of the local board, a relative of a member of the local board, or an employee of the local board.
    - A contract under $25,000 between a local workforce development board and a member of that board, a relative of a local board member, or an employee of the local board is not required to receive prior approval by the DEO.[44]
- Each local workforce development board is required to submit its annual budget to the DEO for review.

The bill deletes a provision defining the term "cause."[45]

The bill creates a provision that allows the chief elected official for the local workforce development board to remove a member of the local board, the executive director of the local board, or the designated person responsible for the operation and administration of the local board for cause.

Florida Youth Summer Jobs Pilot Program

Section 6 amends s. 445.0071, F.S., to replace CareerSource with the state board or the DEO in provisions relating to the Florida Youth Summer Jobs Pilot Program.[46]

- The Broward Workforce Development Board, in consultation with the state board, must provide a program offering at-risk and disadvantaged children summer jobs.
- The pilot program must be administered by the local workforce development board in consultation with the state board.

[44] Such contracts must be approved by a two-thirds vote of the local board, and must be reported to the DEO and the state board within 30-days of approval. *See* s. 445.007, F.S.
[45] The bill amends s. 445.002, F.S., to define the term "for cause."
[46] The Florida Youth Summer Jobs Pilot Program was developed within workforce development district 22, which is served by the Broward Workforce Development Board. The program offers at-risk and disadvantaged children summer jobs in partnership with local communities and public employees. *See* s. 445.0071, F.S.

- The Broward Workforce Development Board must report to the state board and the DEO.[47]
- The state board must report the performance of the program to the Legislature by November 1 of each year.

Workforce Training Institute

Section 7 makes numerous changes to the organization and procedures of the Workforce Training Institute in s. 445.008, F.S.

The bill authorizes the state board, through CareerSource, to create the Workforce Training Institute and to engage in necessary administrative functions. Additionally, the bill requires CareerSource to report all donations and grants they receive to the state board and the DEO.

One-stop Delivery System

Section 8 amends s. 445.009, F.S., to replace CareerSource with the state board or the DEO in provisions relating to one-stop delivery systems.

- Subject to a process designed by the state board, local workforce development boards must designate one-stop delivery system operators.
- The DEO approves the designation of one-stop delivery system operators.[48]
- The state board, in conjunction with the DEO, may notify the Governor of any one-stop delivery system partners that fail to enter into an understanding with the local workforce development board.
- The state board, the DEO, and local workforce development boards must create a centralized help center to assist local workforce development boards.
- The state board must develop an implementation plan for intensive services and training that is provided to individuals through Intensive Service Accounts and Individual Training Accounts.
- The DEO must periodically review Individual Training Account pricing schedules and present findings and recommendations for process improvement to the President of the Senate and the Speaker of the House of Representatives.
- The state board must develop a system to foster the leveraging of appropriated resources for the workforce system and must report on such efforts in the annual report.
- The state board and the DEO must coordinate a plan among the agencies for a One-Stop Electronic Network.

Workforce Information Systems

Section 9 amends s. 445.011, F.S., to replace CareerSource with the DEO and to require the DEO to consult with the state board in provisions relating to workforce information systems.

[47] The report must include the number of at-risk and disadvantaged children who enter the program, the types of work activities they participate in, and the number of children who return to school, go on to postsecondary school, or enter the workforce full time at the end of the program. *See* s. 445.0071, F.S.
[48] The bill provides that the DEO must require the local workforce development board to demonstrate that safeguards are in place to ensure fair competition and practices.

- The DEO, in consultation with the state board, must implement automated information systems.
- The DEO is authorized to procure independent verification and validation services associated with developing and implementing any workforce information system.
- The DEO must coordinate development and implementation of workforce information systems with the state chief information officer.

Transitional Benefits and Services

Section 10 amends s. 445.028, F.S., to replace CareerSource with the DEO in provisions relating to transitional benefits and services.

- In cooperation with DEO, the Department of Children and Families (DCF) must develop procedures to ensure that families leaving the temporary cash assistance program (TCA)[49] receive transitional benefits and services.
- The DEO and the DCF must develop procedures to maximize the utilization of transitional Medicaid by families who leave the TCA program.

Individual Development Accounts

Section 11 amends s. 445.051, F.S., to replace CareerSource with the state board in provisions relating to individual development.

- The state board must establish procedures for local workforce development boards to include in their annual program and financial plan an application to offer an individual development account program[50] as part of their Temporary Assistance for Needy Families (TANF)[51] allocation.
- The state board must establish policies and procedures to ensure that funds held in an individual development account are not withdrawn without a qualified purpose.
- The state board must establish procedures for controlling the withdrawal of funds for uses other than qualified purposes.
- Pursuant to policy direction by the state board, the DEO must adopt the rules necessary to implement s. 445.051, F.S.

Authority for Audits

Section 12 amends s. 11.45, F.S., to clarify that the Auditor General may conduct audits of CareerSource, the state board, and the programs created by the state board.

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[49] The Temporary Cash Assistance Program provides cash assistance to families with children under the age of 18 or under the age of 19 if the child is a full time high school student. The program helps support families while allowing children to remain in their homes. *See* Florida Department of Children and Families, *Temporary Cash Assistance (TCA)* https://www.myflfamilies.com/service-programs/access/temporary-cash-assistance.shtml (last visited Jan. 17, 2020).

[50] An Individual Development Account is a special bank account that helps low income families save for the purchase of a home, education expenses, or to start a business. *See* Social Security Administration, *Spotlight on Individual Development Accounts* (2019) https://www.ssa.gov/ssi/spotlights/spot-individual-development.htm (last visited Jan. 17, 2020).

[51] The Temporary Assistance for Needy Families program is a federal grant that provides funding for cash welfare to needy families with children. *See* Florida Department of Children and Families, *Temporary Assistance for Needy Families* (January 2016) https://www.myflfamilies.com/service-programs/access/docs/TANF%20101%20final.pdf (last visited Jan. 17, 2020).

DEO Powers and Duties

Section 13 amends s. 443.171, F.S., to provide that the DEO must submit information to the state board annually as required by law.

Effective Date

Section 14 provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The impacted governmental organizations will have to update their internal structures or policies in the administration and oversight of Florida's Workforce Development System. The costs are indeterminate, but expected to be minimal.

VI. Technical Deficiencies:

Lines 249-255 permit, but do not require, the state board to hire a "director." However, lines 346-350 require the state board to hire an "executive director." If the terms refer to the same position, the bill would be less susceptible to misinterpretation by using the same term. Also, if they do refer to the same position, it is unclear whether the intent is to authorize the state board to hire or require it to.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 445.002, 445.003, 445.004, 445.006, 445.007, 445.0071, 445.008, 445.009, 445.011, 445.028, 445.051, 11.45, and 443.171.

IX. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry, and Technology

Subject: Committee Agenda Request

Date: January 22, 2020

I respectfully request that **Senate Bill #1244**, relating to State Workforce Development Boards, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ben Albritton
Florida Senate, District 26

File signed original with committee office

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10
Meeting Date

SB 1244
Bill Number (if applicable)

Topic Workforce Development Boards

Amendment Barcode (if applicable)

Name Nicholas Alvarez

Job Title Legislative Affairs Director

Address 107 E. Madison
Street

Tallahassee FL 32399
City *State* *Zip*

Phone 850-294-3053

Email Nicholas.Alvarez@deo.myflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Economic Opportunity

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

COMMITTEE VOTE RECORD

COMMITTEE: Innovation, Industry, and Technology
ITEM: SB 1244
FINAL ACTION: Favorable
MEETING DATE: Monday, February 10, 2020
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Building

FINAL VOTE								
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bracy						
X		Bradley						
		Brandes						
X		Braynon						
X		Farmer						
	X	Gibson						
X		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
8	1	**TOTALS**						
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By Senator Albritton

26-00826B-20 20201244__

A bill to be entitled

An act relating to state workforce development boards; amending s. 445.002, F.S.; defining the terms "for cause" and "state board"; amending s. 445.003, F.S.; replacing CareerSource Florida, Inc., with the state board or the Department of Economic Opportunity in provisions relating to the implementation of the federal Workforce Innovation and Opportunity Act; authorizing, rather than requiring, certain funds to be reserved for the Incumbent Worker Training Program; conforming provisions to changes made by the act; authorizing the state board to hire a director and staff; requiring the state board to authorize the director and staff to work with the department for specified reasons; amending s. 445.004, F.S.; revising provisions relating to the operation of CareerSource Florida, Inc.; revising the purpose of CareerSource Florida, Inc.; providing purpose for the state board; revising the organizational structure of CareerSource Florida, Inc.; providing requirements for the organizational structure of the state board; providing the state board with powers and authority previously held by CareerSource Florida, Inc.; revising the requirements related to such powers and authority; authorizing the department to consult with the state board to issue certain technical assistance letters; requiring the state board, rather than CareerSource Florida, Inc., to submit an annual report to the Governor and the Legislature; authorizing the Auditor

General to conduct an audit of the state board and programs or entities created by the state board; requiring the state board, rather than CareerSource Florida, Inc., to establish certain uniform performance accountability measures; requiring the state board, in consultation with the department, to design the workforce development strategy for the state; requiring that the strategy be approved by the Governor; revising requirements relating to the workforce development system; amending s. 445.006, F.S.; requiring that the state board, rather than CareerSource Florida, Inc., take certain actions relating to the state plan for workforce development; amending s. 445.007, F.S.; replacing CareerSource Florida, Inc., with the state board or the department in provisions relating to local workforce development boards; deleting the definition of the term "cause"; authorizing a chief elected official for a local workforce development board to remove certain persons from the board for cause; requiring the department to provide certain guidance to specified entities; deleting an obsolete provision; making technical changes; amending s. 445.0071, F.S.; replacing CareerSource Florida, Inc., with the state board or the department in provisions relating to the Florida Youth Summer Jobs Pilot Program; amending s. 445.008, F.S.; revising authority relating to the Workforce Training Institute; requiring that certain donations and grants be reported to the state board and the

department; amending s. 445.009, F.S.; replacing CareerSource Florida, Inc., with the state board or the department in provisions relating to one-stop delivery systems; deleting an obsolete provision; amending s. 445.011, F.S.; replacing CareerSource Florida, Inc., with the department in provisions relating to workforce information systems; requiring the department to consult with the state board in implementing certain automated information systems; deleting a provision requiring CareerSource Florida, Inc., to take certain actions when procuring workforce information systems; amending s. 445.028, F.S.; replacing CareerSource Florida, Inc., with the department in provisions relating to transitional benefits and services; amending s. 445.051, F.S.; replacing CareerSource Florida, Inc., with the state board in provisions relating to individual development accounts; amending ss. 11.45 and 443.171, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Present subsections (2) and (3) of section 445.002, Florida Statutes, are redesignated as subsections (3) and (5), respectively, and new subsections (2) and (4) are added to that section, to read:

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

(2) "For cause" includes, but is not limited to, engaging

in fraud or other criminal acts, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.

(4) "State board" means the state workforce development board established pursuant to the Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, Title I, s. 101. The state board shall be supported by CareerSource Florida, Inc., which works at the direction of the state board in consultation with the department as required by this chapter.

Section 2. Subsections (2) and (3), paragraphs (b) and (c) of subsection (4), and subsection (5) of section 445.003, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

445.003 Implementation of the federal Workforce Innovation and Opportunity Act.—

(2) FOUR-YEAR PLAN.—The state board ~~CareerSource Florida, Inc.,~~ shall prepare and submit a 4-year plan, consistent with the requirements of the Workforce Innovation and Opportunity Act. Mandatory and optional federal partners shall be fully involved in designing the plan's one-stop delivery system strategy. The plan must clearly define each program's statewide duties and role relating to the system. The plan must detail a process that would fully integrate all federally mandated and optional partners.

(3) FUNDING.—

(a) Title I, Workforce Innovation and Opportunity Act funds; Wagner-Peyser funds; and NAFTA/Trade Act funds will be expended based on the 4-year plan of the state board ~~CareerSource Florida, Inc~~. The plan must outline and direct the

method used to administer and coordinate various funds and programs that are operated by various agencies. The following provisions apply to these funds:

1. At least 50 percent of the Title I funds for Adults and Dislocated Workers which are passed through to local workforce development boards shall be allocated to and expended on Individual Training Accounts unless a local workforce development board obtains a waiver from the state board ~~CareerSource Florida, Inc~~. Tuition, books, and fees of training providers and other training services prescribed and authorized by the Workforce Innovation and Opportunity Act qualify as Individual Training Account expenditures.

2. Fifteen percent of Title I funding shall be retained at the state level and dedicated to state administration and shall be used to design, develop, induce, and fund innovative Individual Training Account pilots, demonstrations, and programs. Of such funds retained at the state level, $2 million may ~~shall~~ be reserved for the Incumbent Worker Training Program created under subparagraph 3. Eligible state administration costs include the costs of funding for the state board and state board staff ~~of CareerSource Florida, Inc.~~; operating fiscal, compliance, and management accountability systems through the department ~~CareerSource Florida, Inc.~~; conducting evaluation and research on workforce development activities; and providing technical and capacity building assistance to local workforce development areas at the direction of the state board ~~CareerSource Florida, Inc~~. Notwithstanding s. 445.004, such administrative costs may not exceed 25 percent of these funds. An amount not to exceed 75 percent of these funds shall be

allocated to Individual Training Accounts and other workforce development strategies for other training designed and tailored by the department in consultation with the state board ~~CareerSource Florida, Inc.~~, including, but not limited to, programs for incumbent workers, nontraditional employment, and enterprise zones. The department, in consultation with the state board ~~CareerSource Florida, Inc.~~, shall design, adopt, and fund Individual Training Accounts for distressed urban and rural communities.

3. The Incumbent Worker Training Program is created for the purpose of providing grant funding for continuing education and training of incumbent employees at existing Florida businesses. The program will provide reimbursement grants to businesses that pay for preapproved, direct, training-related costs.

a. The Incumbent Worker Training Program will be administered by CareerSource Florida, Inc., which may, at its discretion, contract with a private business organization to serve as grant administrator.

b. The program shall be administered pursuant to s. 134(d)(4) of the Workforce Innovation and Opportunity Act. Priority for funding shall be given to businesses with 25 employees or fewer, businesses in rural areas, businesses in distressed inner-city areas, businesses in a qualified targeted industry, businesses whose grant proposals represent a significant upgrade in employee skills, or businesses whose grant proposals represent a significant layoff avoidance strategy.

c. All costs reimbursed by the program must be preapproved by CareerSource Florida, Inc., or the grant administrator. The

program may not reimburse businesses for trainee wages, the purchase of capital equipment, or the purchase of any item or service that may possibly be used outside the training project. A business approved for a grant may be reimbursed for preapproved, direct, training-related costs including tuition, fees, books and training materials, and overhead or indirect costs not to exceed 5 percent of the grant amount.

d. A business that is selected to receive grant funding must provide a matching contribution to the training project, including, but not limited to, wages paid to trainees or the purchase of capital equipment used in the training project; must sign an agreement with CareerSource Florida, Inc., or the grant administrator to complete the training project as proposed in the application; must keep accurate records of the project's implementation process; and must submit monthly or quarterly reimbursement requests with required documentation.

e. All Incumbent Worker Training Program grant projects shall be performance-based with specific measurable performance outcomes, including completion of the training project and job retention. CareerSource Florida, Inc., or the grant administrator shall withhold the final payment to the grantee until a final grant report is submitted and all performance criteria specified in the grant contract have been achieved.

f. The state board ~~CareerSource Florida, Inc.,~~ may establish guidelines necessary to implement the Incumbent Worker Training Program.

g. No more than 10 percent of the Incumbent Worker Training Program's total appropriation may be used for overhead or indirect purposes.

4. At least 50 percent of Rapid Response funding shall be dedicated to Intensive Services Accounts and Individual Training Accounts for dislocated workers and incumbent workers who are at risk of dislocation. The department ~~CareerSource Florida, Inc.,~~ shall also maintain an Emergency Preparedness Fund from Rapid Response funds, which will immediately issue Intensive Service Accounts, Individual Training Accounts, and other federally authorized assistance to eligible victims of natural or other disasters. At the direction of the Governor, these Rapid Response funds shall be released to local workforce development boards for immediate use after events that qualify under federal law. Funding shall also be dedicated to maintain a unit at the state level to respond to Rapid Response emergencies and to work with state emergency management officials and local workforce development boards. All Rapid Response funds must be expended based on a plan developed by the state board in consultation with the department ~~CareerSource Florida, Inc.,~~ and approved by the Governor.

(b) The administrative entity for Title I, Workforce Innovation and Opportunity Act funds, and Rapid Response activities is the department ~~of Economic Opportunity~~, which shall provide direction to local workforce development boards regarding Title I programs and Rapid Response activities ~~pursuant to the direction of CareerSource Florida, Inc~~.

(4) FEDERAL REQUIREMENTS, EXCEPTIONS AND REQUIRED MODIFICATIONS.—

(b) The state board, in consultation with the department ~~CareerSource Florida, Inc.~~, may make modifications to the state's plan, policies, and procedures to comply with federally

mandated requirements that in its judgment must be complied with to maintain funding provided pursuant to Pub. L. No. 113-128. The state board shall provide written notice to the Governor, the President of the Senate, and the Speaker of the House of Representatives within 30 days after any such changes or modifications.

(c) The state board ~~CareerSource Florida, Inc.,~~ shall enter into a memorandum of understanding with the Florida Department of Education to ensure that federally mandated requirements of Pub. L. No. 113-128 are met and are in compliance with the state plan for workforce development.

(5) LONG-TERM CONSOLIDATION OF WORKFORCE DEVELOPMENT.—The state board ~~CareerSource Florida, Inc.,~~ may recommend workforce-related divisions, bureaus, units, programs, duties, commissions, boards, and councils for elimination, consolidation, or privatization.

(6) AUTHORITY TO HIRE DIRECTOR AND STAFF.—The state board may hire a director and staff to assist in carrying out the functions of the Workforce Innovation and Opportunity Act and in using funds made available through the act. The state board shall authorize the director and staff to work with the department in carrying out the functions of the Workforce Innovation and Opportunity Act.

Section 3. Section 445.004, Florida Statutes, is amended to read:

445.004 CareerSource Florida, Inc., and the state board; creation; purpose; membership; duties and powers.—

(1) CareerSource Florida, Inc., is created as a not-for-profit corporation, which shall be registered, incorporated,

organized, and operated in compliance with chapter 617 and shall operate at the direction of the state board. CareerSource Florida, Inc., is not a unit or entity of state government and is exempt from chapters 120 and 287. CareerSource Florida, Inc., shall apply the procurement and expenditure procedures required by federal law for the expenditure of federal funds. CareerSource Florida, Inc., shall be administratively housed within the department and shall operate under agreement with the department ~~of Economic Opportunity; however, CareerSource Florida, Inc., is not subject to control, supervision, or direction by the department in any manner~~. The Legislature finds that public policy dictates that CareerSource Florida, Inc., operate in the most open and accessible manner consistent with its public purpose. To this end, the Legislature specifically declares that CareerSource Florida, Inc., its board, councils, and any advisory committees or similar groups created by CareerSource Florida, Inc., are subject to the provisions of chapter 119 relating to public records, and those provisions of chapter 286 relating to public meetings.

(2) CareerSource Florida, Inc., provides administrative support for the state board, ~~is~~ the principal workforce policy organization for the state. The purpose of the state board ~~CareerSource Florida, Inc.,~~ is to design and implement strategies that help Floridians enter, remain in, and advance in the workplace, so that they may become more highly skilled and successful, which benefits these Floridians, Florida businesses, and the entire state, and fosters the development of the state's business climate. CareerSource Florida, Inc., shall, consistent with its agreement with the department, implement the policy

directives of the state board and administer state workforce development programs as authorized by law.

(3)(a) ~~CareerSource Florida, Inc., shall be governed by a board of directors, whose membership and appointment must be consistent with Pub. L. No. 113-128, Title I, s. 101(b).~~ Members of the state board described in Pub. L. No. 113-128, Title I, s. 101(b)(1)(C)(iii)(I)(aa) shall be nonvoting members. The number of directors shall be determined by the Governor, who shall consider the importance of minority, gender, and geographic representation in making appointments to the board. When the Governor is in attendance, he or she shall preside at all meetings of the state board ~~of directors~~.

(b) The state board ~~of directors of CareerSource Florida, Inc.,~~ shall be chaired by a board member designated by the Governor pursuant to Pub. L. No. 113-128. A member may not serve more than two terms.

(c) Members appointed by the Governor may serve no more than two terms and must be appointed for 3-year terms. However, in order to establish staggered terms for board members, the Governor shall appoint or reappoint one-third of the board members for 1-year terms, one-third of the board members for 2-year terms, and one-third of the board members for 3-year terms beginning July 1, 2016. Subsequent appointments or reappointments shall be for 3-year terms, except that a member appointed to fill a vacancy on the board shall be appointed to serve only the remainder of the term of the member whom he or she is replacing, and may be appointed for a subsequent 3-year term. Private sector representatives of businesses, appointed by the Governor pursuant to Pub. L. No. 113-128, shall constitute a

majority of the membership of the board. Private sector representatives shall be appointed from nominations received by the Governor, including, but not limited to, those nominations made by the President of the Senate and the Speaker of the House of Representatives. Private sector appointments to the board must be representative of the business community of this state; no fewer than one-half of the appointments must be representative of small businesses, and at least five members must have economic development experience. Members appointed by the Governor serve at the pleasure of the Governor and are eligible for reappointment.

(d) The board must include the vice chairperson of the board of directors of Enterprise Florida, Inc., and one member representing each of the Workforce Innovation and Opportunity Act partners, including the Division of Career and Adult Education, and other entities representing programs identified in the Workforce Innovation and Opportunity Act, as determined necessary.

(e) A member of the state board ~~of directors of CareerSource Florida, Inc.,~~ may be removed by the Governor for cause. Absence from three consecutive meetings results in automatic removal. The chair of the state board ~~CareerSource Florida, Inc.,~~ shall notify the Governor of such absences.

(f) Representatives of businesses appointed to the state board ~~of directors~~ may not include providers of workforce services.

(g) The state board serves as the board of directors of CareerSource Florida, Inc. The state board shall hire an executive director. The executive director is the president, the

chief executive officer, and an employee of CareerSource Florida, Inc.

(4)(a) The president of CareerSource Florida, Inc., ~~shall be hired by the board of directors of CareerSource Florida, Inc., and~~ shall serve at the pleasure of the Governor ~~in the capacity of an executive director and secretary of CareerSource Florida, Inc~~.

(b) The state board ~~of directors of CareerSource Florida, Inc.,~~ shall meet at least quarterly and at other times upon the call of its chair. The board and its committees, subcommittees, or other subdivisions may use any method of telecommunications to conduct meetings, including establishing a quorum through telecommunications, if the public is given proper notice of the telecommunications meeting and is given reasonable access to observe and, if appropriate, participate.

(c) A majority of the total current membership of the state board ~~of directors of CareerSource Florida, Inc.,~~ constitutes a quorum.

(d) A majority of those voting is required to organize and conduct the business of the board, except that a majority of the entire board of directors is required to adopt or amend the bylaws.

(e) Except as delegated or authorized by the state board ~~of directors of CareerSource Florida, Inc.~~, individual members have no authority to control or direct the operations of CareerSource Florida, Inc., or the actions of its officers and employees~~, including the president~~.

(f) Members of the state board ~~of directors of CareerSource Florida, Inc.,~~ and its committees serve without compensation,

but these members, the president, and the employees of CareerSource Florida, Inc., may be reimbursed for all reasonable, necessary, and actual expenses pursuant to s. 112.061.

(g) The state board shall ~~of directors of CareerSource Florida, Inc., may~~ establish an executive committee consisting of the chair and at least six additional board members selected by the chair, one of whom must be a representative of organized labor. The executive committee and the president have such authority as the board delegates to them, except that the state board ~~of directors~~ may not delegate to the executive committee authority to take action that requires approval by a majority of the entire state board ~~of directors~~.

(h) The chair may appoint committees to fulfill the board's responsibilities, to comply with federal requirements, or to obtain technical assistance, and must incorporate members of local workforce development boards into its structure.

(i) Each member of the state board ~~of directors~~ who is not otherwise required to file a financial disclosure pursuant to s. 8, Art. II of the State Constitution or s. 112.3144 must file disclosure of financial interests pursuant to s. 112.3145.

(5) The state board ~~CareerSource Florida, Inc.,~~ shall have all the powers and authority not explicitly prohibited by statute which are necessary or convenient to carry out and effectuate its purposes as determined by statute, Pub. L. No. 113-128, and the Governor, as well as its functions, duties, and responsibilities, including, but not limited to, the following:

(a) Serving as the state's Workforce Development Board pursuant to Pub. L. No. 113-128. Unless otherwise required by

federal law, at least 90 percent of workforce development funding must go toward direct customer service.

(b) Providing ~~oversight and~~ policy direction to ensure that the following programs are administered by the department consistent ~~in compliance~~ with approved plans ~~and under contract with CareerSource Florida, Inc.~~:

1. Programs authorized under Title I of the Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, with the exception of programs funded directly by the United States Department of Labor under Title I, s. 167.

2. Programs authorized under the Wagner-Peyser Act of 1933, as amended, 29 U.S.C. ss. 49 et seq.

3. Activities authorized under Title II of the Trade Act of 2002, as amended, 19 U.S.C. ss. 2272 et seq., and the Trade Adjustment Assistance Program.

4. Activities authorized under 38 U.S.C. chapter 41, including job counseling, training, and placement for veterans.

5. Employment and training activities carried out under funds awarded to this state by the United States Department of Housing and Urban Development.

6. Welfare transition services funded by the Temporary Assistance for Needy Families Program, created under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, Pub. L. No. 104-193, and Title IV, s. 403, of the Social Security Act, as amended.

7. The Florida Bonding Program, provided under Pub. L. No. 97-300, s. 164(a)(1).

8. The Food Assistance Employment and Training Program, provided under the Food and Nutrition Act of 2008, 7 U.S.C. ss.

2011-2032; the Food Security Act of 1988, Pub. L. No. 99-198; and the Hunger Prevention Act, Pub. L. No. 100-435.

9. The Quick-Response Training Program, provided under ss. 288.046-288.047. Matching funds and in-kind contributions that are provided by clients of the Quick-Response Training Program shall count toward the requirements of s. 288.904, pertaining to the return on investment from activities of Enterprise Florida, Inc.

10. The Work Opportunity Tax Credit, provided under the Tax and Trade Relief Extension Act of 1998, Pub. L. No. 105-277, and the Taxpayer Relief Act of 1997, Pub. L. No. 105-34.

11. Offender placement services, provided under ss. 944.707-944.708.

(c) The department may adopt rules necessary to administer this chapter which relate to implementing and administering the programs listed in paragraph (b) as well as rules related to eligible training providers and auditing and monitoring subrecipients of the workforce system grant funds. The department may consult with the state board to issue technical assistance letters on the operation of federal programs and the expenditure of federal funds by the state board or any local workforce development board. A technical assistance letter must be in writing, must be posted on the department's website, and remains in effect until superseded or terminated. A technical assistance letter is not a declaratory statement issued pursuant to s. 120.565, an order issued pursuant to s. 120.569, or a rule of general applicability under s. 120.54. Section 120.53 does not apply to technical assistance letters.

(d) Contracting with public and private entities as

necessary to further the directives of this section. All contracts executed by CareerSource Florida, Inc., must include specific performance expectations and deliverables. All CareerSource Florida, Inc., contracts, including those solicited, managed, or paid by the department pursuant to s. 20.60(5)(c) are exempt from s. 112.061, but shall be governed by subsection (1).

(e) Notifying the Governor and the department of statewide or local workforce development and training needs that may require policy changes or an update to the state plan required under s. 445.003, and notifying the Governor, the President of the Senate, and the Speaker of the House of Representatives of noncompliance by the department or other agencies or obstruction of the state board's efforts by such agencies. Upon such notification, the Executive Office of the Governor shall assist agencies to bring them into compliance with board objectives.

(f) Ensuring that the state does not waste valuable training resources. The state board's policy shall be ~~board shall direct~~ that all resources, including equipment purchased for training Workforce Innovation and Opportunity Act clients, be available for use at all times by eligible populations as first priority users. At times when eligible populations are not available, such resources shall be used for any other state-authorized education and training purpose. The state board ~~CareerSource Florida, Inc.,~~ may authorize expenditures to award suitable framed certificates, pins, or other tokens of recognition for performance by a local workforce development board, its committees and subdivisions, and other units of the workforce system. The state board ~~CareerSource Florida, Inc.,~~

may also authorize expenditures for promotional items, such as t-shirts, hats, or pens printed with messages promoting the state's workforce system to employers, job seekers, and program participants. However, such expenditures are subject to federal regulations applicable to the expenditure of federal funds.

(g) Establishing a dispute resolution process for all memoranda of understanding or other contracts or agreements entered into between the department and local workforce development boards.

(h) Archiving records with the Bureau of Archives and Records Management of the Division of Library and Information Services of the Department of State.

(6) The state board ~~CareerSource Florida, Inc.,~~ may take action that it deems necessary to achieve the purposes of this section, including, but not limited to:

(a) Creating a state employment, education, and training policy that ensures that programs to prepare workers are responsive to present and future business and industry needs and complement the initiatives of Enterprise Florida, Inc.

(b) Establishing policy direction for a funding system that provides incentives to improve the outcomes of career education, registered apprenticeship, and work-based learning programs and that focuses resources on occupations related to new or emerging industries that add greatly to the value of the state's economy.

(c) Establishing a comprehensive policy related to the education and training of target populations such as those who have disabilities, are economically disadvantaged, receive public assistance, are not proficient in English, or are dislocated workers. This approach should ensure the effective

use of federal, state, local, and private resources in reducing the need for public assistance.

(d) Designating Institutes of Applied Technology composed of public and private postsecondary institutions working together with business and industry to ensure that career education programs use the most advanced technology and instructional methods available and respond to the changing needs of business and industry.

(e) Providing policy direction for a system to project and evaluate labor market supply and demand using the results of the Workforce Estimating Conference created in s. 216.136 and the career education performance standards identified under s. 1008.43.

(f) Reviewing the performance of public programs that are responsible for economic development, education, employment, and training. The review must include an analysis of the return on investment of these programs.

(g) Expanding the occupations identified by the Workforce Estimating Conference to meet needs created by local emergencies or plant closings or to capture occupations within emerging industries.

(7) By December 1 of each year, the state board ~~CareerSource Florida, Inc.,~~ shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader a complete and detailed annual report setting forth:

(a) All audits, including any audit conducted under subsection (8).

(b) The operations and accomplishments of the board, including the programs or entities specified in subsection (6).

(8) Pursuant to his or her own authority or at the direction of the Legislative Auditing Committee, the Auditor General may conduct an audit of the state board and CareerSource Florida, Inc., or the programs or entities created by the state board ~~CareerSource Florida, Inc~~. The Office of Program Policy Analysis and Government Accountability, pursuant to its authority or at the direction of the Legislative Auditing Committee, may review the systems and controls related to performance outcomes and quality of services of CareerSource Florida, Inc.

(9) The state board ~~CareerSource Florida, Inc.~~, in collaboration with the local workforce development boards and appropriate state agencies and local public and private service providers, shall establish uniform performance accountability measures that apply across the core programs to gauge the performance of the state and local workforce development boards in achieving the workforce development strategy.

(a) The performance accountability measures for the core programs consist of the primary indicators of performance, any additional indicators of performance, and a state-adjusted level of performance for each indicator pursuant to Pub. L. No. 113-128, Title I, s. 116(b).

(b) The performance accountability measures for each local area consist of the primary indicators of performance, any additional indicators of performance, and a local level of performance for each indicator pursuant to Pub. L. No. 113-128. The local level of performance is determined by the local board,

the chief elected official, and the Governor pursuant to Pub. L. No. 113-128, Title I, s. 116(c).

(c) Performance accountability measures shall be used to generate performance reports pursuant to Pub. L. No. 113-128, Title I, s. 116(d).

(d) The performance accountability measures of success that are adopted by the state board ~~CareerSource Florida, Inc.,~~ or the local workforce development boards must be developed in a manner that provides for an equitable comparison of the relative success or failure of any service provider in terms of positive outcomes.

(10) The workforce development strategy for the state shall be designed by the state board, in consultation with the department, and approved by the Governor ~~CareerSource Florida, Inc~~. The strategy must include efforts that enlist business, education, and community support for students to achieve long-term career goals, ensuring that young people have the academic and occupational skills required to succeed in the workplace. The strategy must also assist employers in upgrading or updating the skills of their employees and assisting workers to acquire the education or training needed to secure a better job with better wages. The strategy must assist the state's efforts to attract and expand job-creating businesses offering high-paying, high-demand occupations.

(11) The workforce development system must encourage ~~use a charter-process approach aimed at encouraging~~ local design and control of service delivery and targeted activities. The state board, in consultation with the department ~~CareerSource Florida, Inc.~~, shall be responsible for ensuring that ~~granting charters~~

~~to~~ local workforce development boards ~~that~~ have a membership consistent with the requirements of federal and state law and have developed a plan consistent with the state's workforce development strategy. The plan must specify methods for allocating the resources and programs in a manner that eliminates unwarranted duplication, minimizes administrative costs, meets the existing job market demands and the job market demands resulting from successful economic development activities, ensures access to quality workforce development services for all Floridians, allows for pro rata or partial distribution of benefits and services, prohibits the creation of a waiting list or other indication of an unserved population, serves as many individuals as possible within available resources, and maximizes successful outcomes. The state board ~~As part of the charter process, CareerSource Florida, Inc.,~~ shall establish incentives for effective coordination of federal and state programs, outline rewards for successful job placements, and institute collaborative approaches among local service providers. ~~Local decisionmaking and control shall be important components for inclusion in this charter application.~~

(12) CareerSource Florida, Inc., under the direction of the state board, shall enter into agreement with Space Florida and collaborate with vocational institutes, community colleges, colleges, and universities in this state to develop a workforce development strategy to implement the workforce provisions of s. 331.3051.

Section 4. Section 445.006, Florida Statutes, is amended to read:

445.006 State plan for workforce development.—

(1) STATE PLAN.—The state board ~~CareerSource Florida, Inc.~~, in conjunction with state and local partners in the workforce system, shall develop a state plan that produces an educated and skilled workforce. The state plan must consist of strategic and operational planning elements. The state plan shall be submitted by the Governor to the United States Department of Labor pursuant to the requirements of Pub. L. No. 113-128.

(2) STRATEGIC PLANNING ELEMENTS.—The state board ~~CareerSource Florida, Inc.~~, in conjunction with state and local partners in the workforce system, shall develop strategic planning elements, pursuant to Pub. L. No. 113-128, Title I, s. 102, for the state plan.

(a) The strategic planning elements of the state plan must include, but need not be limited to, strategies for:

1. Fulfilling the workforce system goals and strategies prescribed in s. 445.004;

2. Aggregating, integrating, and leveraging workforce system resources;

3. Coordinating the activities of federal, state, and local workforce system partners;

4. Addressing the workforce needs of small businesses; and

5. Fostering the participation of rural communities and distressed urban cores in the workforce system.

(b) The strategic planning elements must include criteria for allocating workforce resources to local workforce development boards. With respect to allocating funds to serve customers of the welfare transition program, such criteria may include weighting factors that indicate the relative degree of difficulty associated with securing and retaining employment

placements for specific subsets of the welfare transition caseload.

(3) OPERATIONAL PLANNING ELEMENTS.—The state board ~~CareerSource Florida, Inc.~~, in conjunction with state and local partners in the workforce system, shall develop operational planning elements, pursuant to Pub. L. No. 113-128, Title I, s. 102, for the state plan.

Section 5. Subsection (1), paragraph (b) of subsection (2), and subsections (3) through (7) and (9) through (13) of section 445.007, Florida Statutes, are amended, and paragraph (c) is added to subsection (2) of that section, to read:

445.007 Local workforce development boards.—

(1) One local workforce development board shall be appointed in each designated service delivery area and shall serve as the local workforce development board pursuant to Pub. L. No. 113-128. The membership of the local board must be consistent with Pub. L. No. 113-128, Title I, s. 107(b). If a public education or training provider is represented on the local board, a representative of a private education provider must also be appointed to the local board. The state board ~~CareerSource Florida, Inc.,~~ may waive this requirement if requested by a local workforce development board if it is demonstrated that such representatives do not exist in the region. The importance of minority and gender representation shall be considered when making appointments to the local board. The local board, its committees, subcommittees, and subdivisions, and other units of the workforce system, including units that may consist in whole or in part of local governmental units, may use any method of telecommunications to conduct

meetings, including establishing a quorum through telecommunications, provided that the public is given proper notice of the telecommunications meeting and reasonable access to observe and, when appropriate, participate. Local workforce development boards are subject to chapters 119 and 286 and s. 24, Art. I of the State Constitution. If the local workforce development board enters into a contract with an organization or individual represented on the local board ~~of directors~~, the contract must be approved by a two-thirds vote of the local board, a quorum having been established, and the local board member who could benefit financially from the transaction must abstain from voting on the contract. A local board member must disclose any such conflict in a manner that is consistent with the procedures outlined in s. 112.3143. Each member of a local workforce development board who is not otherwise required to file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution or s. 112.3144 shall file a statement of financial interests pursuant to s. 112.3145. The executive director or designated person responsible for the operational and administrative functions of the local workforce development board who is not otherwise required to file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution or s. 112.3144 shall file a statement of financial interests pursuant to s. 112.3145.

(2)

(b) The Governor may remove a member of the local board, the executive director of the local board, or the designated person responsible for the operational and administrative

functions of the local board for cause. ~~As used in this paragraph, the term "cause" includes, but is not limited to, engaging in fraud or other criminal acts, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.~~

(c) The chief elected official for the local workforce development board may remove a member of the local board, the executive director of the local board, or the designated person responsible for the operational and administrative functions of the local board for cause.

(3) The department ~~of Economic Opportunity, under the direction of CareerSource Florida, Inc.,~~ shall assign staff to meet with each local workforce development board annually to review the local board's performance and to certify that the local board is in compliance with applicable state and federal law.

(4) In addition to the duties and functions specified by the state board ~~CareerSource Florida, Inc.,~~ and by the interlocal agreement approved by the local county or city governing bodies, the local workforce development board shall have the following responsibilities:

(a) Develop, submit, ratify, or amend the local plan pursuant to Pub. L. No. 113-128, Title I, s. 108 and this act.

(b) Conclude agreements necessary to designate the fiscal agent and administrative entity. A public or private entity, including an entity established pursuant to s. 163.01, which makes a majority of the appointments to a local workforce development board may serve as the local board's administrative entity if approved by the department ~~CareerSource Florida, Inc.,~~

based upon a showing that a fair and competitive process was used to select the administrative entity.

(c) ~~Complete assurances required for the charter process of CareerSource Florida, Inc., and~~ Provide ongoing oversight related to administrative costs, duplicated services, career counseling, economic development, equal access, compliance and accountability, and performance outcomes.

(d) Oversee the one-stop delivery system in its local area.

(5) The department, in conjunction with the state board ~~CareerSource Florida, Inc.~~, shall implement a training program for the local workforce development boards to familiarize local board members with the state's workforce development goals and strategies.

(6) The local workforce development board shall designate all local service providers and may not transfer this authority to a third party. Consistent with the intent of the Workforce Innovation and Opportunity Act, local workforce development boards should provide the greatest possible choice of training providers to those who qualify for training services. A local workforce development board may not restrict the choice of training providers based upon cost, location, or historical training arrangements. However, a local board may restrict the amount of training resources available to any one client. Such restrictions may vary based upon the cost of training in the client's chosen occupational area. The local workforce development board may be designated as a one-stop operator and direct provider of intake, assessment, eligibility determinations, or other direct provider services except training services. Such designation may occur only with the

agreement of the chief elected official and the Governor as specified in 29 U.S.C. s. 2832(f)(2). The state board ~~CareerSource Florida, Inc.,~~ shall establish procedures by which a local workforce development board may request permission to operate under this section and the criteria under which such permission may be granted. The criteria shall include, but need not be limited to, a reduction in the cost of providing the permitted services. Such permission shall be granted for a period not to exceed 3 years for any single request submitted by the local workforce development board.

(7) Local workforce development boards shall adopt a committee structure consistent with applicable federal law and state policies established by the state board ~~CareerSource Florida, Inc~~.

(9) For purposes of procurement, local workforce development boards and their administrative entities are not state agencies and are exempt from chapters 120 and 287. The local workforce development boards shall apply the procurement and expenditure procedures required by federal law and policies of the department ~~of Economic Opportunity~~ and the state board ~~CareerSource Florida, Inc.,~~ for the expenditure of federal, state, and nonpass-through funds. The making or approval of smaller, multiple payments for a single purchase with the intent to avoid or evade the monetary thresholds and procedures established by federal law and policies of the department ~~of Economic Opportunity~~ and the state board ~~CareerSource Florida, Inc.,~~ is grounds for removal for cause. Local workforce development boards, their administrative entities, committees, and subcommittees, and other workforce units may authorize

expenditures to award suitable framed certificates, pins, or other tokens of recognition for performance by units of the workforce system. Local workforce development boards; their administrative entities, committees, and subcommittees; and other workforce units may authorize expenditures for promotional items, such as t-shirts, hats, or pens printed with messages promoting Florida's workforce system to employers, job seekers, and program participants. However, such expenditures are subject to federal regulations applicable to the expenditure of federal funds. All contracts executed by local workforce development boards must include specific performance expectations and deliverables.

(10) State and federal funds provided to the local workforce development boards may not be used directly or indirectly to pay for meals, food, or beverages for board members, staff, or employees of local workforce development boards, the state board ~~CareerSource Florida, Inc.~~, or the department ~~of Economic Opportunity~~ except as expressly authorized by state law. Preapproved, reasonable, and necessary per diem allowances and travel expenses may be reimbursed. Such reimbursement shall be at the standard travel reimbursement rates established in s. 112.061 and shall be in compliance with all applicable federal and state requirements. The department shall provide fiscal and programmatic guidance ~~CareerSource Florida, Inc., shall develop a statewide fiscal policy applicable~~ to the state board, CareerSource Florida, Inc., and all local workforce development boards, to hold both the state and local workforce development boards strictly accountable for adherence to the policy and subject to regular and periodic

monitoring by the department ~~of Economic Opportunity, the administrative entity for CareerSource Florida, Inc~~. Local boards are prohibited from expending state or federal funds for entertainment costs and recreational activities for local board members and employees as these terms are defined by 2 C.F.R. part 200 ~~230~~.

(11) To increase transparency and accountability, a local workforce development board must comply with the requirements of this section before contracting with a member of the local board or a relative, as defined in s. 112.3143(1)(c), of a local board member or of an employee of the local board. Such contracts may not be executed before or without the prior approval of the department ~~CareerSource Florida, Inc~~. Such contracts, as well as documentation demonstrating adherence to this section as specified by the department ~~CareerSource Florida, Inc.~~, must be submitted to the department ~~of Economic Opportunity~~ for review and approval ~~recommendation according to criteria to be determined by CareerSource Florida, Inc~~. Such a contract must be approved by a two-thirds vote of the local board, a quorum having been established; all conflicts of interest must be disclosed before the vote; and any member who may benefit from the contract, or whose relative may benefit from the contract, must abstain from the vote. A contract under $25,000 between a local workforce development board and a member of that board or between a relative, as defined in s. 112.3143(1)(c), of a local board member or of an employee of the local board is not required to have the prior approval of the department ~~CareerSource Florida, Inc.~~, but must be approved by a two-thirds vote of the local board, a quorum having been established, and

must be reported to the department ~~of Economic Opportunity~~ and the state board ~~CareerSource Florida, Inc.,~~ within 30 days after approval. If a contract cannot be approved by the department ~~CareerSource Florida, Inc.~~, a review of the decision to disapprove the contract may be requested by the local workforce development board or other parties to the disapproved contract.

(12) Each local workforce development board shall develop a budget for the purpose of carrying out the duties of the local board under this section, subject to the approval of the chief elected official. Each local workforce development board shall submit its annual budget for review to the department ~~CareerSource Florida, Inc.,~~ no later than 2 weeks after the chair approves the budget.

~~(13) By March 1, 2018, CareerSource Florida, Inc., shall establish regional planning areas in accordance with Pub. L. No. 113-128, Title I, s. 106(a)(2). Local workforce development boards and chief elected officials within identified regional planning areas shall prepare a regional workforce development plan as required under Pub. L. No. 113-128, Title I, s. 106(c)(2).~~

Section 6. Subsections (1) and (4) of section 445.0071, Florida Statutes, are amended to read:

445.0071 Florida Youth Summer Jobs Pilot Program.—

(1) CREATION.—Contingent upon appropriations, there is created the Florida Youth Summer Jobs Pilot Program within workforce development district 22 served by the Broward Workforce Development Board. The board shall, in consultation with the state board ~~CareerSource Florida, Inc.~~, provide a program offering at-risk and disadvantaged children summer jobs

in partnership with local communities and public employers.

(4) GOVERNANCE.—

(a) The pilot program shall be administered by the local workforce development board in consultation with the state board ~~CareerSource Florida, Inc~~.

(b) The local workforce development board shall report to the state board and the department ~~CareerSource Florida, Inc.,~~ the number of at-risk and disadvantaged children who enter the program, the types of work activities they participate in, and the number of children who return to school, go on to postsecondary school, or enter the workforce full time at the end of the program. The state board ~~CareerSource Florida, Inc.,~~ shall report to the Legislature by November 1 of each year on the performance of the program.

Section 7. Subsections (1) and (2) of section 445.008, Florida Statutes, are amended to read:

445.008 Workforce Training Institute.—

(1) The state board, through CareerSource Florida, Inc., may create the Workforce Training Institute, which shall be a comprehensive program of workforce training courses designed to meet the unique needs of, and shall include Internet-based training modules suitable for and made available to, professionals integral to the workforce system, including advisors and counselors in educational institutions.

(2) The state board, through CareerSource Florida, Inc., may enter into a contract for the provision of administrative support services for the institute and shall adopt policies for the administration and operation of the institute and establish admission fees in an amount which, in the aggregate, does not

exceed the cost of the program. CareerSource Florida, Inc., may accept donations or grants of any type for any function or purpose of the institute. All donations and grants received by CareerSource Florida, Inc., must be reported to the state board and the department.

Section 8. Subsections (2), (3), and (4), paragraph (b) of subsection (6), subsection (7), paragraphs (a), (c), and (d) of subsection (8), and subsection (9) of section 445.009, Florida Statutes, are amended to read:

445.009 One-stop delivery system.—

(2)(a) Subject to a process designed by the state board ~~CareerSource Florida, Inc.~~, and in compliance with Pub. L. No. 113-128, local workforce development boards shall designate one-stop delivery system operators.

(b) A local workforce development board may designate as its one-stop delivery system operator any public or private entity that is eligible to provide services under any state or federal workforce program that is a mandatory or discretionary partner in the local workforce development area's one-stop delivery system if approved by the department ~~CareerSource Florida, Inc.,~~ upon a showing by the local workforce development board that a fair and competitive process was used in the selection. As a condition of authorizing a local workforce development board to designate such an entity as its one-stop delivery system operator, the department ~~CareerSource Florida, Inc.,~~ must require the local workforce development board to demonstrate that safeguards are in place to ensure that the one-stop delivery system operator will not exercise an unfair competitive advantage or unfairly refer or direct customers of

the one-stop delivery system to services provided by that one-stop delivery system operator. A local workforce development board may retain its current one-stop career center operator without further procurement action if the board has an established one-stop career center that has complied with federal and state law.

(c) The local workforce development board must enter into a memorandum of understanding with each mandatory or optional partner participating in the one-stop delivery system which details the partner's required contribution to infrastructure costs, as required by Pub. L. No. 113-128, s. 121(h). ~~If the local workforce development board and the one-stop partner are unable to come to an agreement regarding infrastructure costs by July 1, 2017, the costs shall be allocated pursuant to a policy established by the Governor.~~

(3) Local workforce development boards shall enter into a memorandum of understanding with the department ~~of Economic Opportunity~~ for the delivery of employment services authorized by the federal Wagner-Peyser Act. This memorandum of understanding must be performance based.

(a) Unless otherwise required by federal law, at least 90 percent of the Wagner-Peyser funding must go into direct customer service costs.

(b) Employment services must be provided through the one-stop delivery system, under the guidance of one-stop delivery system operators. One-stop delivery system operators shall have overall authority for directing the staff of the workforce system. Personnel matters shall remain under the ultimate authority of the department. However, the one-stop delivery

system operator shall submit to the department information concerning the job performance of employees of the department who deliver employment services. The department shall consider any such information submitted by the one-stop delivery system operator in conducting performance appraisals of the employees.

(c) The department shall retain fiscal responsibility and accountability for the administration of funds allocated to the state under the Wagner-Peyser Act. An employee of the department who is providing services authorized under the Wagner-Peyser Act shall be paid using Wagner-Peyser Act funds.

(4) One-stop delivery system partners shall enter into a memorandum of understanding pursuant to Pub. L. No. 113-128, Title I, s. 121, with the local workforce development board. Failure of a local partner to participate cannot unilaterally block the majority of partners from moving forward with their one-stop delivery system, and the state board, in conjunction with the department, may notify the Governor ~~CareerSource Florida, Inc., pursuant to s. 445.004(5)(e), may make notification~~ of a local partner that fails to participate.

(6)

(b) To expand electronic capabilities, the state board and the department ~~CareerSource Florida, Inc.~~, working with local workforce development boards, shall develop a centralized help center to assist local workforce development boards in fulfilling core services, minimizing the need for fixed-site one-stop delivery system centers.

(7) Intensive services and training provided pursuant to Pub. L. No. 113-128 shall be provided to individuals through Intensive Service Accounts and Individual Training Accounts. The

state board ~~CareerSource Florida, Inc.,~~ shall develop an implementation plan, including identification of initially eligible training providers, transition guidelines, and criteria for use of these accounts. Individual Training Accounts must be compatible with Individual Development Accounts for education allowed in federal and state welfare reform statutes.

(8)(a) Individual Training Accounts must be expended on programs that prepare people to enter high-wage occupations identified by the Workforce Estimating Conference created by s. 216.136, and on other programs recommended by the state board and approved by the department ~~as approved by CareerSource Florida, Inc~~.

(c) The department ~~CareerSource Florida, Inc.,~~ shall periodically review Individual Training Account pricing schedules developed by local workforce development boards and present findings and recommendations for process improvement to the President of the Senate and the Speaker of the House of Representatives.

(d) To the maximum extent possible, training providers shall use funding sources other than the funding provided under Pub. L. No. 113-128. The state board ~~CareerSource Florida, Inc.,~~ shall develop a system to encourage the leveraging of appropriated resources for the workforce system and shall report on such efforts as part of the required annual report.

(9)(a) The state board ~~CareerSource Florida, Inc.~~, working with the department, shall coordinate among the agencies a plan for a One-Stop Electronic Network made up of one-stop delivery system centers and other partner agencies that are operated by authorized public or private for-profit or not-for-profit

agents. The plan shall identify resources within existing revenues to establish and support this electronic network for service delivery that includes Government Services Direct. If necessary, the plan shall identify additional funding needed to achieve the provisions of this subsection.

(b) The network shall assure that a uniform method is used to determine eligibility for and management of services provided by agencies that conduct workforce development activities. The Department of Management Services shall develop strategies to allow access to the databases and information management systems of the following systems in order to link information in those databases with the one-stop delivery system:

1. The Reemployment Assistance Program under chapter 443.

2. The public employment service described in s. 443.181.

3. The public assistance information system used by the Department of Children and Families and the components related to temporary cash assistance, food assistance, and Medicaid eligibility.

4. The Student Financial Assistance System of the Department of Education.

5. Enrollment in the public postsecondary education system.

6. Other information systems determined appropriate by the state board in consultation with the department ~~CareerSource Florida, Inc~~.

Section 9. Section 445.011, Florida Statutes, is amended to read:

445.011 Workforce information systems.—

(1) The department, in consultation with the state board ~~CareerSource Florida, Inc.~~, shall implement, subject to

legislative appropriation, automated information systems that are necessary for the efficient and effective operation and management of the workforce development system. These information systems shall include, but need not be limited to, the following:

(a) An integrated management system for the one-stop service delivery system, which includes, at a minimum, common registration and intake, screening for needs and benefits, case planning and tracking, training benefits management, service and training provider management, performance reporting, executive information and reporting, and customer-satisfaction tracking and reporting.

1. The system should report current budgeting, expenditure, and performance information for assessing performance related to outcomes, service delivery, and financial administration for workforce programs pursuant to s. 445.004(5) and (9).

2. The information system should include auditable systems and controls to ensure financial integrity and valid and reliable performance information.

3. The system should support service integration and case management by providing for case tracking for participants in welfare transition programs.

(b) An automated job-matching information system that is accessible to employers, job seekers, and other users via the Internet, and that includes, at a minimum:

1. Skill match information, including skill gap analysis; resume creation; job order creation; skill tests; job search by area, employer type, and employer name; and training provider linkage;

2. Job market information based on surveys, including local, state, regional, national, and international occupational and job availability information; and

3. Service provider information, including education and training providers, child care facilities and related information, health and social service agencies, and other providers of services that would be useful to job seekers.

(2) The department ~~In procuring workforce information systems, CareerSource Florida, Inc., shall employ competitive processes, including requests for proposals, competitive negotiation, and other competitive processes to ensure that the procurement results in the most cost-effective investment of state funds.~~

~~(3) CareerSource Florida, Inc.,~~ may procure independent verification and validation services associated with developing and implementing any workforce information system.

(3)~~(4)~~ The department ~~CareerSource Florida, Inc.,~~ shall coordinate development and implementation of workforce information systems with the state chief information officer to ensure compatibility with the state's information system strategy and enterprise architecture.

Section 10. Section 445.028, Florida Statutes, is amended to read:

445.028 Transitional benefits and services.—In cooperation with the department ~~CareerSource Florida, Inc.~~, the Department of Children and Families shall develop procedures to ensure that families leaving the temporary cash assistance program receive transitional benefits and services that will assist the family in moving toward self-sufficiency. At a minimum, such procedures

must include, but are not limited to, the following:

(1) Each recipient of cash assistance who is determined ineligible for cash assistance for a reason other than a work activity sanction shall be contacted by the workforce system case manager and provided information about the availability of transitional benefits and services. Such contact shall be attempted prior to closure of the case management file.

(2) Each recipient of temporary cash assistance who is determined ineligible for cash assistance due to noncompliance with the work activity requirements shall be contacted and provided information in accordance with s. 414.065(1).

(3) The department, in consultation with the board of directors of CareerSource Florida, Inc., shall develop informational material, including posters and brochures, to better inform families about the availability of transitional benefits and services.

(4) The department ~~CareerSource Florida, Inc.~~, in cooperation with the Department of Children and Families shall, to the extent permitted by federal law, develop procedures to maximize the utilization of transitional Medicaid by families who leave the temporary cash assistance program.

Section 11. Subsections (6), (8), and (13) of section 445.051, Florida Statutes, are amended to read:

445.051 Individual development accounts.—

(6) The state board ~~CareerSource Florida, Inc.,~~ shall establish procedures for local workforce development boards to include in their annual program and financial plan an application to offer an individual development account program as part of their TANF allocation. These procedures must include,

but need not be limited to, administrative costs permitted for the fiduciary organization and policies relative to identifying the match ratio and limits on the deposits for which the match will be provided in the application process. The state board ~~CareerSource Florida, Inc.,~~ shall establish policies and procedures necessary to ensure that funds held in an individual development account are not withdrawn except for one or more of the qualified purposes described in this section.

(8) The state board ~~CareerSource Florida, Inc.,~~ shall establish procedures for controlling the withdrawal of funds for uses other than qualified purposes, including specifying conditions under which an account must be closed.

(13) Pursuant to policy direction by the state board ~~CareerSource Florida, Inc.~~, the department ~~of Economic Opportunity~~ shall adopt such rules as are necessary to implement this act.

Section 12. Paragraph (p) of subsection (3) of section 11.45, Florida Statutes, is amended to read:

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

(3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:

(p) CareerSource Florida, Inc.; the state board, as that term is defined in s. 445.002; ~~,~~ or the programs or entities created by the state board ~~CareerSource Florida, Inc.~~, created pursuant to s. 445.004.

Section 13. Subsection (1) of section 443.171, Florida

Statutes, is amended to read:

443.171 Department of Economic Opportunity and commission; powers and duties; records and reports; proceedings; state-federal cooperation.—

(1) POWERS AND DUTIES.—The Department of Economic Opportunity shall administer this chapter. The department may employ persons, make expenditures, require reports, conduct investigations, and take other action necessary or suitable to administer this chapter. The department shall annually submit information to the state board, as defined in s. 445.002 ~~CareerSource Florida, Inc.~~, covering the administration and operation of this chapter during the preceding calendar year for inclusion in the strategic plan under s. 445.006 and may make recommendations for amendment to this chapter.

Section 14. This act shall take effect July 1, 2020.

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 Innovation, Industry, and Technology

BILL:	CS/SB 776
INTRODUCER:	Innovation, Industry, and Technology Committee and Senator Perry
SUBJECT:	Florida Real Estate Appraisal Board
DATE:	February 10, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Baird/Oxamendi	Imhof	IT	**Fav/CS**
2.			CM	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 776 reduces the number of board members sitting on the Florida Real Estate Appraisal Board (board) from nine to seven members. The bill removes from the board one of the two current members representing the appraisal management industry and one of the two current members who represents the general public and is not connected in any way with the practice of real estate appraisal. The bill requires that the members of the board reflect the ethnic and gender diversity of Florida.

The effective date of the bill is November 1, 2020.

II. Present Situation:

The Florida Real Estate Appraisal Board (board) within the Department of Business and Professional Regulation (DBPR) regulates real estate appraisers under part II of ch. 475, F.S., The board, through its rules, is authorized to:

- Regulate the issuance of licenses, certifications, registrations, and permits;
- Discipline appraisers;
- Establish qualifications for licenses, certifications, registrations, and permits;
- Regulate approved courses;
- Establish standards for real estate appraisals; and
- Establish standards for and regulate supervisory appraisers.

The board consists of nine members.[1] The members of the board are all appointed by the Governor, subject to confirmation by the Senate. The Governor may remove any member for cause.[2] The membership of the board must consist of:[3]

- Four members who are real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment;
- Two members who represent the appraisal management industry;
- One member who represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance; and
- Two members who represent the general public and are not connected in any way with the practice of real estate appraisal.

Members of the board are appointed for 4-year terms, and may not be appointed for more than two consecutive terms.[4] The headquarters of the board is in Orlando, Florida.[5] The board must meet at least once each calendar quarter to conduct its business.[6] Members must elect a chairperson at the first meeting each year.[7]

Each member of the board is entitled to per diem and travel expenses as set by legislative appropriation for each day that the member engages in the business of the board.[8]

Currently there are 6,655 active certified real estate appraisers.[9] In comparison, the Real Estate Commission, which regulates real estate agents, associates, and schools, and has 293,012 active licensees, consists of seven members.

In 2010, the membership of the board was increased from seven members to nine members with the addition of two members representing the appraisal management industry.[10]

III. Effect of Proposed Changes:

The bill amends s. 475.613, F.S., to reduce the number of board members sitting on the board from nine members to seven members. The bill removes from the board one of the two current members representing the appraisal management industry and one of the two current members who represents the general public and is not connected in any way with the practice of real estate appraisal. The bill requires that the members of the board reflect the ethnic and gender diversity of Florida.

---

[1] Section 475.613(1), F.S.
[2] Section 475.613(1)(a), F.S.
[3] *Id.*
[4] Section 475.613(1)(a), F.S.
[5] Section 475.613(1)(b), F.S.
[6] Section 475.613(1)(c), F.S.
[7] Section 475.613(1)(d), F.S.
[8] Section 475.613(1)(e), F.S.
[9] *See* Department of Business and Professional Regulation, *Annual Report, Divisions of Professions, Certified Public Accounting, Real Estate, and Regulation, Fiscal Year 2018-2019*, at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1819.pdf , at page 19 (last visited Jan. 29, 2020).
[10] Chapter 2010-84, s. 2, Laws of Fla.

The effective date of the bill is November 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DBPR estimates that the bill will reduce travel expenses for the board by $5,200 per year.[11]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 475.613 of the Florida Statutes.

[11] *See* Department of Business and Professional Regulation, *SB 776 Bill Analysis*, p. 3 (Dec. 11, 2020) (on file with Senate Committee on Innovation, Industry, and Technology).

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 Innovation, Industry, and Technology on February 10, 2020:
The CS requires that the members of the Florida Real Estate Appraisal Board reflect the ethnic and gender diversity of Florida.

B. Amendments:

None.

837646

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
	.	
	.	
	.	

The Committee on Innovation, Industry, and Technology (Gibson) recommended the following:

Senate Amendment (with title amendment)

Delete line 32
and insert:
on the board. Members of the board shall reflect the ethnic and gender diversity of this state. To the extent possible, no more than two members

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

837646

Delete line 4

and insert:

composition of the board; requiring the board membership to reflect the ethnic and gender diversity of this state; providing an effective date.

2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION	
BILL NUMBER:	SB 776
BILL TITLE:	Florida Real Estate Appraisal Board
BILL SPONSOR:	Sen. Perry
EFFECTIVE DATE:	11/01/2020

COMMITTEES OF REFERENCE
1) Innovation, Industry, and Technology
2) Commerce and Tourism
3) Rules
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE
N/A

SIMILAR BILLS	
BILL NUMBER:	N/A
SPONSOR:	N/A

PREVIOUS LEGISLATION	
BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

IDENTICAL BILLS	
BILL NUMBER:	N/A
SPONSOR:	N/A

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	December 11, 2019
LEAD AGENCY ANALYST:	Amrita Singh, Deputy Director
ADDITIONAL ANALYST(S):	Tom Coker, Technology Thomas Izzo, OGC Rules Tracy Dixon, Service Operations Thomas Izzo, OGC Rules
LEGAL ANALYST:	Tom Thomas, General Counsel, Professions

FISCAL ANALYST:	Raleigh Close, Planning and Budgeting

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The effect of the bill is to reduce the number of members of the Florida Real Estate Appraisal Board, from nine (9) to seven (7). Members from the "appraisal management industry" category will be reduced from two (2) to one (1) position; and the "general public member" category will be reduced from two (2) to one (1) position.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Florida Real Estate Appraisal Board currently has nine (9) members. Currently, four (4) members of the board must be real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least five (5) years immediately preceding appointment. Two (2) members of the board must represent the appraisal management industry. One (1) member of the board must represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance. Two (2) members of the board shall be representatives of the general public and shall not be connected in any way with the practice of real estate appraisal. Two (2) of the members must be licensed or certified residential real estate appraisers and two (2) of the members must be certified general real estate appraisers at the time of their appointment.

2. EFFECT OF THE BILL:

The effect of the bill is to reduce the number of members of the Florida Real Estate Appraisal Board, from nine (9) to seven (7). Member positions from the "appraisal management industry" category will be reduced from two (2) to one (1); and the "general public member" category will be reduced from two (2) to one (1) position.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒

If yes, explain:	N/A
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	N/A
Opponents and summary of position:	N/A

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☒ N☐

Board:	Florida Real Estate Appraisal Board
Board Purpose:	Per s. 475.613(2), F.S., the "board shall have, through its rules, full power to regulate the issuance of license, certifications, registrations and permits; to discipline appraisers in any manner permitted under this section; to establish qualifications for licenses, certifications, registrations, and permits consistent with this section; to regulate approved courses; to establish standards for real estate appraisals; and to establish standards for and regulate supervisory appraisers."
Who Appoints:	Governor
Changes:	The effect of the bill is to reduce the number of members of the Florida Real Estate Appraisal Board, from nine (9) to seven (7). Member positions from the "appraisal management industry" category will be reduced from two (2) to one (1); and the "general public member" category will be reduced from two (2) to one (1) position.
Bill Section Number(s):	Section 1

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☒

Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain.	N/A
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?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☒ N☐

Revenues:	None
Expenditures:	Minimal reduction related to board travel. Travel cost savings is estimated to be $5,200 per year.
Does the legislation contain a State Government appropriation?	No

If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☐ N☒

Revenues:	N/A
Expenditures:	N/A
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☒

If yes, explain impact.	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

1. DOES THE BILL 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.	N/A

FEDERAL IMPACT

1. DOES THE BILL 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.	N/A

ADDITIONAL COMMENTS

Division of Service Operations: No impact.

OGC Rules: No additional comments.

Fiscal Comment: Travel savings is based on the average travel costs per board member per meeting. Board members average $432 per meeting. The board meets six times per year. The estimated travel cost savings is $432 times six meetings times two board members ($432 X 6 X 2 = $5,182 (rounded to $5,200)).

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	**OGC:** No additional comments.

2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION	
BILL NUMBER:	SB 776
BILL TITLE:	Florida Real Estate Appraisal Board
BILL SPONSOR:	Sen. Perry
EFFECTIVE DATE:	11/01/2020

COMMITTEES OF REFERENCE
1) Innovation, Industry, and Technology
2) Commerce and Tourism
3) Rules
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE
N/A

SIMILAR BILLS	
BILL NUMBER:	N/A
SPONSOR:	N/A

PREVIOUS LEGISLATION	
BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

IDENTICAL BILLS	
BILL NUMBER:	N/A
SPONSOR:	N/A

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	December 11, 2019
LEAD AGENCY ANALYST:	Amrita Singh, Deputy Director
ADDITIONAL ANALYST(S):	Tom Coker, Technology Thomas Izzo, OGC Rules Tracy Dixon, Service Operations Thomas Izzo, OGC Rules
LEGAL ANALYST:	Tom Thomas, General Counsel, Professions

FISCAL ANALYST:	Raleigh Close, Planning and Budgeting

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The effect of the bill is to reduce the number of members of the Florida Real Estate Appraisal Board, from nine (9) to seven (7). Members from the "appraisal management industry" category will be reduced from two (2) to one (1) position; and the "general public member" category will be reduced from two (2) to one (1) position.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Florida Real Estate Appraisal Board currently has nine (9) members. Currently, four (4) members of the board must be real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least five (5) years immediately preceding appointment. Two (2) members of the board must represent the appraisal management industry. One (1) member of the board must represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance. Two (2) members of the board shall be representatives of the general public and shall not be connected in any way with the practice of real estate appraisal. Two (2) of the members must be licensed or certified residential real estate appraisers and two (2) of the members must be certified general real estate appraisers at the time of their appointment.

2. EFFECT OF THE BILL:

The effect of the bill is to reduce the number of members of the Florida Real Estate Appraisal Board, from nine (9) to seven (7). Member positions from the "appraisal management industry" category will be reduced from two (2) to one (1); and the "general public member" category will be reduced from two (2) to one (1) position.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒

If yes, explain:	N/A
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	N/A
Opponents and summary of position:	N/A

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☒ N☐

Board:	Florida Real Estate Appraisal Board
Board Purpose:	Per s. 475.613(2), F.S., the "board shall have, through its rules, full power to regulate the issuance of license, certifications, registrations and permits; to discipline appraisers in any manner permitted under this section; to establish qualifications for licenses, certifications, registrations, and permits consistent with this section; to regulate approved courses; to establish standards for real estate appraisals; and to establish standards for and regulate supervisory appraisers."
Who Appoints:	Governor
Changes:	The effect of the bill is to reduce the number of members of the Florida Real Estate Appraisal Board, from nine (9) to seven (7). Member positions from the "appraisal management industry" category will be reduced from two (2) to one (1); and the "general public member" category will be reduced from two (2) to one (1) position.
Bill Section Number(s):	Section 1

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☒

Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain.	N/A
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?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☒ N☐

Revenues:	None
Expenditures:	Minimal reduction related to board travel. Travel cost savings is estimated to be $5,200 per year.
Does the legislation contain a State Government appropriation?	No

If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☐ N☒

Revenues:	N/A
Expenditures:	N/A
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☒

If yes, explain impact.	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

1. DOES THE BILL 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.	N/A

FEDERAL IMPACT

1. DOES THE BILL 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.	N/A

ADDITIONAL COMMENTS

Division of Service Operations: No impact.

OGC Rules: No additional comments.

Fiscal Comment: Travel savings is based on the average travel costs per board member per meeting. Board members average $432 per meeting. The board meets six times per year. The estimated travel cost savings is $432 times six meetings times two board members ($432 X 6 X 2 = $5,182 (rounded to $5,200)).

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	**OGC:** No additional comments.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/20
Meeting Date

776
Bill Number (if applicable)

Topic Florida Real Estate Appraisal Board

Amendment Barcode (if applicable)

Name Andy Gonzalez

Job Title Public Policy Representative

Address 200 S. Monroe St
Street

Phone 850-224-1400

Tallahassee FL 32301
City *State* *Zip*

Email andyg@floridarealtors.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Realtors

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

COMMITTEE VOTE RECORD

COMMITTEE: Innovation, Industry, and Technology
ITEM: SB 776
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Monday, February 10, 2020
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Building

FINAL VOTE			2/10/2020 1 Amendment 837646 Gibson					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bracy						
X		Bradley						
		Brandes						
X		Braynon						
X		Farmer						
X		Gibson						
X		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
9	0	**TOTALS**	RCS	-				
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By the Committee on Innovation, Industry, and Technology; and Senator Perry

580-03373-20 2020776c1

A bill to be entitled

An act relating to the Florida Real Estate Appraisal Board; amending s. 475.613, F.S.; revising the composition of the board; requiring the board membership to reflect the ethnic and gender diversity of this state; providing an effective date.

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

Section 1. Subsection (1) of section 475.613, Florida Statutes, is amended to read:

475.613 Florida Real Estate Appraisal Board.—

(1) There is created the Florida Real Estate Appraisal Board, which shall consist of seven ~~nine~~ members appointed by the Governor, subject to confirmation by the Senate. Four members of the board must be real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment. In appointing real estate appraisers to the board, while not excluding other appraisers, the Governor shall give preference to real estate appraisers who are not primarily engaged in real estate brokerage or mortgage lending activities. One member ~~Two members~~ of the board must represent the appraisal management industry. One member of the board must represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance. One member ~~Two members~~ of the board must be a representative ~~shall be representatives~~ of the general public and shall not be connected in any way with the practice of real

estate appraisal. The appraiser members shall be as representative of the entire industry as possible, and membership in a nationally recognized or state-recognized appraisal organization shall not be a prerequisite to membership on the board. Members of the board shall reflect the ethnic and gender diversity of this state. To the extent possible, no more than two members of the board shall be primarily affiliated with any one particular national or state appraisal association. Two of the members must be licensed or certified residential real estate appraisers and two of the members must be certified general real estate appraisers at the time of their appointment.

(a) Members of the board shall be appointed for 4-year terms. Any vacancy occurring in the membership of the board shall be filled by appointment by the Governor for the unexpired term. Upon expiration of her or his term, a member of the board shall continue to hold office until the appointment and qualification of the member's successor. A member may not be appointed for more than two consecutive terms. The Governor may remove any member for cause.

(b) The headquarters for the board shall be in Orlando.

(c) The board shall meet at least once each calendar quarter to conduct its business.

(d) The members of the board shall elect a chairperson at the first meeting each year.

(e) Each member of the board is entitled to per diem and travel expenses as set by legislative appropriation for each day that the member engages in the business of the board.

Section 2. This act shall take effect November 1, 2020.

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 Innovation, Industry, and Technology

BILL:	SB 1268
INTRODUCER:	Senator Gruters
SUBJECT:	Capital Investment Tax Credit
DATE:	February 7, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	IT	**Pre-meeting**
2.			FT	
3.			AP	

I. Summary:

SB 1268 amends ss. 220.191, F.S., to allow eligible projects that create intellectual property to qualify for the Capital Investment Tax Credit (CITC) against a qualified taxpayer's liability for corporate income tax or insurance premium tax generated by the project.

The bill expands the time frame for calculating the amount of cumulative capital investment and eligible capital costs made in connection with a project. Under the bill, for all eligible projects, including those that do not create intellectual property, capital investments and eligible capital costs include those made or incurred from the start date of an eligible project to the completion of the project.

The bill has an impact on state government. See Section V, Fiscal Impact Statement.

The bill is effective upon becoming a law.

II. Present Situation:

The CITC is an incentive used to attract and grow capital-intensive industries in Florida. It is an annual tax credit, provided for up to 20 years, against corporate income tax or insurance premium tax liabilities generated by or arising out of the qualifying project.

The projects that are eligible for the CITC include:

- A new or expanded facility which creates at least 100 new jobs in Florida in designated portions of these high-impact sectors[1] identified by Enterprise Florida, Inc., and certified by the Department of Economic Opportunity (DEO):[2]
    - Clean energy;
    - Financial services;
    - Information technology;
    - Life sciences [biomedical];
    - Semi-conductors [silicon technology];
    - Transportation equipment manufacturing;
    - Advanced manufacturing; or
    - A corporate headquarters facility.
- A new or expanded facility engaged in a designated target industry which is induced by the CITC to create or retain at least 1,000 jobs, provided that at least 100 of those jobs are new, pay an annual average wage of at least 130 percent of the average private sector wage in the area, and results in a cumulative capital investment of at least $100 million.[3]
- A new or expanded headquarters facility which locates in an enterprise zone and brownfield area[4] and is induced by the CITC to create at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage, and which new or expanded headquarters facility makes a cumulative capital investment in Florida of at least $250 million. Headquarters projects can also qualify with a capital investment as low as $15 million.[5]

The level of the CITC available to a qualifying project is determined by a project's eligible capital costs.[6] Eligible capital costs include all expenses incurred in the acquisition, construction, installation, and equipping of a project from the beginning of construction to the commencement of operations.[7] Taxpayers are generally allowed an annual CITC equal to five percent of the project's eligible capital costs, against the corporate income tax liability of insurance premium tax liability generated by the qualifying project, for a period not to exceed 20 years.[8]

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[1] *See* the list of qualified industries in the DEO's 2019 Incentives Report, at p. 56, at http://www.floridajobs.org/docs/default-source/reports-and-legislation/2018-2019-annual-incentives-report---final.pdf?sfvrsn=c2a340b0_2 (last visited Feb. 6, 2020) According to the Office of Program Policy Analysis and Government Accountability (OPPAGA) in its Report No. 19-07, *Florida Economic Development Program Evaluations – Year 7* (December 2019), at p. 17, the high-impact sectors designated by DEO currently include the following business sectors: Transportation Equipment (Aviation/Aerospace), Information Technology, Life Sciences, Financial Services, Corporate Headquarters, and Clean Energy. *See* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1916rpt.pdf (last visited Feb. 6, 2020).

[2] *See* s. 288.108(6), F.S.

[3] *See* s. 288.106(2)(q), F.S., for the method of designation of a target industry; the term "target industry business" does not include business involving retail; certain municipal/investor-owned electric utilities, or rural electric cooperatives; any phosphate or other solid minerals severance, mining, or processing; any oil or gas exploration or production; or any business subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

[4] A brownfield area is designated by a local government for possible cleanup and rehabilitation of polluted sites. *See* s. 376.80, F.S., for the brownfield area administration process.

[5] *See* s. 220.191(3)(a), F.S.

[6] *See* s. 220.191(2)(a), F.S.

[7] Section 220.191(1)(c), F.S.

[8] Section 220.191(2)(a), F.S. A credit may not be carried forward or backward to a subsequent or prior year, except that, if a credit granted to a project that results in a cumulative capital investment of at least $100 million is not fully used in any one

The annual CITC may not exceed the following percentages of the annual corporate income tax liability or the insurance premium tax liability generated by or arising out of a qualifying project:

- 100 percent for a qualifying project which results in a cumulative capital investment of at least $100 million.
- 75 percent for a qualifying project which results in a cumulative capital investment of at least $50 million but less than $100 million.
- 50 percent for a qualifying project which results in a cumulative capital investment of at least $25 million but less than $50 million.[9]

III. Effect of Proposed Changes:

SB 1268 expands the list of property that qualifies as a capital investment for purposes of the CITC to include intellectual property. Under the bill, the term "intellectual property" means a copyrightable project for which the eligible capital costs are principally paid directly or indirectly for the creation of the project.

The term "copyrightable project" includes, but is not limited to:

- A copyrightable software or multimedia application and its expansion content made available to an end user;
- Internal development platforms that support the production of multiple applications:
- Cloud-based services that support the functionality of multiple applications; and
- Copyrighted projects registered with the United States Copyright Office which include digital visualization and sound synchronization technologies.[10]

A copyrightable project constituting intellectual property under the bill may not be intended for distribution solely inside Florida, and at least 75 percent of the project's forecasted revenues must originate outside Florida.

For intellectual property projects, the eligible capital costs include wages, salaries, or other compensation paid to legal residents of Florida, as well as the cost of newly purchased software and hardware unique to the project, such as servers, data processing, and visualization technologies that are located in and exclusively used in Florida for the project. The annual average wage of project jobs must be at least 150 percent of the average private sector wage in the area. For intellectual property projects, the qualifying project may be made up of one or more projects with different start and completion dates.

Under the bill, for a qualifying business that establishes qualifying intellectual property projects, a CITC must be granted when the cumulative capital investment for multiple projects is an

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year because of the qualifying business' insufficient tax liability, the unused amount may be used during the period beginning with the 21st year and ending with the 30th year, after the commencement of the project.

[9] *Id*.

[10] Examples of such technology are computer graphic software and animation technology. For academic coursework in such technology, *see* the University of Florida's Digital Arts and Sciences program in the Herbert Wertheim College of Engineering at https://www.cise.ufl.edu/academics/undergraduate/academic-programs/bachelors-degree-programs/#das-degree (last visited Feb. 6, 2020) and Stetson University's Undergraduate Catalog (2019-2010 Edition) at https://catalog.stetson.edu/undergraduate/arts-sciences/computer-science/#coursestext (last visited Feb. 6, 2020).

aggregate of at least $50 million annually for three years, and the capital investment for each individual project is at least $3.75 million.

The CITC may be applied against the liability of a qualified business for corporate income tax and sales and other taxes, or a combination thereof, collected or accrued under ch. 220, F.S., or ch. 212, F.S., respectively. The amount of a CITC is equal to 20 percent of a qualified project's eligible capital costs.

Taxpayers that are unable to use a CITC in a single year due to insufficient tax liability of the qualifying business may be transfer or use any unused amount in any one year or years beginning with the year of the completion of the project and ending the ninth year after completion. Additionally, a taxpayer may elect to transfer unused CITC in any year, but taxpayers receiving credits must use them in the year received, and the credits may not be carried forward or backward. The bill does not limit the type or class of taxpayers that may receive unused CITC by transfer.

A transfer of CITC must be perfected using the procedure set forth in s. 220.191(2)(c), F.S., relating to notices from transferring taxpayers to the Department of Revenue (DOR) of a transfer, certification by the DOR of a transfer, and documentation required for application of the transferred tax credits.[11]

The bill expands the time frame set forth in s. 220.191(5), F.S., relating to the date a qualifying business must achieve and maintain its minimum employment goals prior to receiving a CITC. In addition to the current law requirement that this goal to be met by the project's commencement of operations, the bill provides that such goal may also be achieved by the project completion date.

The bill expands the time frame set forth in s. 220.191(6), F.S., relating to the certifying of a business by the DEO as eligible to receive CITC. In addition to the current law requirement that the DEO first certify a business as eligible for CITC prior to the commencement of its operations, the bill provides that DEO may alternatively certify such eligibility prior to the project's completion date.

The bill conforms cross references and other technical bill drafting conventions.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[11] *See* s. 220.191(2)(c), F.S. The written transfer statement must include: notification of the intent to transfer the tax credits to the transferee; the date the transfer is effective; the transferee's name, address, and federal taxpayer identification number; the tax period; and the amount of tax credits to be transferred. The DOR must, upon receipt of a conforming transfer statement, provide the transferee with a certificate reflecting the tax credit amounts transferred, and the transferee must attach a copy of the certificate to each tax return for which the transferee seeks to apply such tax credits.

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:

Qualifying businesses with a qualifying project that includes intellectual property created as part of its cumulative capital investment will be eligible for the CITC.

C. Government Sector Impact:

The Revenue Estimating Conference has not yet analyzed this bill. The Office of Economic and Demographic Research evaluated the economic benefits of the CITC program in 2017.[12] For the evaluation of the program, the return on investment (ROI) results from proportionally allocating the economic activity attributable to the program payments made by the state.[13]

The ROI for the CITC program in EDR's 2017 evaluation is .043, based on the state payment (tax credits granted) of $66.7 million.[14] In its 2020 evaluation of the CITC program, the ROI is .27, based on the state's payment of $79.3 million.[15] In both evaluations, the CITC program does not break even, however, the state generates enough revenues to recover a portion of its cost in the investment.[16]

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[12] *See* http://edr.state.fl.us/Content/returnoninvestment/ROISELECTPROGRAMS2017final.pdf
[13] *Id*. at p. 2; the evaluation method used by EDR "is similar to the scenario EDR typically reports and feels is most indicative of the program's real return in state revenues." *Id*., and *see also* pp. 9 to 13.
[14] *Id*.
[15] *See* http://www.edr.state.fl.us/Content//returnoninvestment/ROISELECTPROGRAMS2020final.pdf (last visited Feb. 6, 2020).
[16] *Id*. at pp. 6 to 7. *See also* pp. 11 to 17.

EDR notes in its 2020 evaluation:

> Since the CITC program's inception, fifty-three projects have applied, been approved, and are active CITC projects. Of the 53 projects, 20 have confirmed capital investment of at least the $25 million threshold, with a total confirmed capital investment over the life of the program of over $3.7 billion. There were 16 projects expected to have been able to utilize the credit within the review period based on potential job and capital investment milestones. Only twelve of the sixteen businesses have taken the credit since its inception. Of the over $1.84 billion in potential credits [footnote omitted] that could have been taken by qualifying businesses to date, only $269,074,090 has been taken, or 14.6 percent of the total potential. That is, there are still approximately $1.57 billion in outstanding credits that could be claimed in future years.[17]

The Department of Revenue (DOR) notes various concerns about the measurement of a taxpayer's cumulative capital investment in eligible projects, including those that do not create intellectual property, as well as the calculation of and length of time for which a CITC may be granted.[18] The DOR estimates for Fiscal Year 2020-2021, the required modifications to its System for Unified Tax and its electronic services will cost approximately $91,000.[19]

According to the DEO, the bill does not impact its technology systems.[20]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under the bill, the time period for calculation of "cumulative capital investment" and "eligible capital costs" is expanded and will apply to all eligible projects, even those that do not include the creation of intellectual property. *See* lines 28 through 40. For example, project fees incurred prior to the beginning of construction of a building appear to qualify under the definition of "cumulative capital investment" revised by the bill. If such expansion is unintentional, consideration of an amendment may be appropriate to revise the terms "cumulative capital investment" and "eligible capital costs."

[17] *Id*. at p. 16.
[18] *See 2020 Agency Legislative Bill Analysis (Department of Revenue) for SB 1268*, Jan. 14, 2020 (on file with Senate Committee on Innovation, Industries, and Technology) at pp. 6 to 7.
[19] *Id*. at pp. 7 to 8.
[20] *See 2020 Agency Legislative Bill Analysis (Department of Economic Opportunity) for SB 1268*, Jan. 9, 2020 (on file with Senate Committee on Innovation, Industries, and Technology) at p. 6.

Similarly, the bill provides project dates including "start date," "the completion of the project," and "completion date." It is unclear how and by whom these dates will be determined. Consideration of an amendment may be appropriate to clarify these terms.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 220.191 and 288.1089.

IX. Additional Information:

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

None.

B. Amendments:

None.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Chair*
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS
23rd District

January 10, 2020

The Honorable Wilton Simpson, Chair
Innovation, Industry, and Technology Committee
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simpson:

I am writing to request that Senate Bill 1268, Capital Investment Tax Credit to be placed on the agenda of the next Innovation, Industry, and Technology Committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

Joe Gruters

cc: Booter Imhof, Staff Director
Lynn Koon, Committee Administrative Assistant

REPLY TO:
❒ 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
❒ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

2020 AGENCY LEGISLATIVE BILL ANALYSIS
DEPARTMENT OF REVENUE

BILL INFORMATION	
BILL NUMBER:	SB 1268
BILL TITLE:	Capital Investment Tax Credit
BILL SPONSOR:	Senator Gruters
EFFECTIVE DATE:	Upon becoming a law

DL

COMMITTEES OF REFERENCE
1) Innovation, Industry, and Technology
2) Finance and Tax
3) Appropriations
4)
5)

CURRENT COMMITTEE
Innovation, Industry, and Technology

SIMILAR BILLS	
BILL NUMBER:	None
SPONSOR:	

IDENTICAL BILLS	
BILL NUMBER:	None
SPONSOR:	

PREVIOUS LEGISLATION
YEAR/BILL NUMBER/SPONSOR/LAST ACTION: 2019/ SB 1112 C1/ Senator Gruters/ Died in Appropriations

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	01/14/2020
LEAD AGENCY ANALYST:	Debbie Longman (850) 617-8324

POLICY ANALYSIS

1. ANALYSIS OF EACH SECTION THAT AFFECTS THE DEPARTMENT OF REVENUE.

Section 1. Capital investment tax credit. (pp. 1-11)

PRESENT SITUATION

Section 220.191, F.S., provides for three separate capital investment tax credits for qualifying businesses that have established a qualifying project certified by the Department of Economic Opportunity.

1. High Impact (section 220.191(1)(g)1., F.S. and section 220.191(2)(a), F.S.) - A new or expanding facility in Florida that creates at least 100 new jobs in this state and is in one of the high-impact sectors identified by Enterprise Florida, Inc., and certified by the Department of Economic Opportunity. The annual tax credit granted cannot exceed the following percentages of the annual corporate income tax liability or the insurance premium tax liability generated by or arising out of a qualifying project:
    a. One hundred percent for a qualifying project which results in a cumulative capital investment of at least $100 million.
    b. Seventy-five percent for a qualifying project which results in a cumulative capital investment of at least $50 million but less than $100 million.
    c. Fifty percent for a qualifying project which results in a cumulative capital investment of at least $25 million but less than $50 million.

    The total credit can be taken annually at an amount up to 5 percent of the eligible capital costs generated by a qualifying project for a period not to exceed 20 years. In addition to being limited by 5 percent of the eligible capital costs of the qualifying project and the income generated by the qualifying project, the credit is also limited by the tax liability on the tax return that includes the income generated by or arising out of the qualifying project.

    Where the capital investment is at least $100 million, credit amounts not fully used in any one year because of insufficient tax liability on the part of the qualifying business may be used in any one year or years beginning with the 21st year after the commencement of operations of the project and ending with the 30th year after the commencement of operations of the project.

2. Target Industry (section 220.191(1)(g)2., F.S.) - A new or expanded facility in Florida that is engaged in a target industry and creates or retains at least 1,000 jobs in Florida, provided that at least 100 of those jobs are new, pays an annual average wage of at least 130 percent of the average private sector wage, and makes a cumulative capital investment of at least $100 million. The annual credit cannot exceed 50 percent of the increased annual corporate income tax liability or the insurance premium tax liability generated by or arising out of a project qualifying for a 5-year period.

3. Headquarters (section 220.191(1)(g)3., F.S.) - A new or expanded headquarters facility in Florida that locates in an enterprise zone and brownfield area and creates at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage, as published by the Department of Economic Opportunity, and which new or expanded headquarters facility makes a cumulative capital investment in this state of at least $250 million.

    The credit is equal to an amount that is up to 5 percent of the eligible capital costs generated by a qualifying project (up to a maximum of $15 million) for a period not to exceed 20 years, beginning with the commencement of operations of the project, but, in total, cannot exceed 100 percent of the eligible capital costs of the project.

These tax credits may be applied only against the corporate income tax liability or the insurance premium tax liability generated by or arising out of the qualifying project. An insurance company claiming one of these

credits against its insurance premium tax liability does not have to pay any additional retaliatory tax as a result of claiming the credit.

Some exceptions to the general criteria stated above exist for certain projects for the minimum investment criteria, jobs criteria, carryover provision, or transfer provision.

To be eligible for these credits, taxpayers must apply to the Department of Economic Opportunity. The Department of Economic Opportunity, upon recommendation by Enterprise Florida, Inc., must first certify a business as eligible to receive this tax credit prior to the commencement of operations of the qualifying project. Then, the Department of Revenue must enter into a written agreement (in the form of a Technical Assistance Advisement) with the qualifying business specifying the method by which the income generated by or arising out of the qualifying project will be determined.

The Department of Economic Opportunity requires a qualifying business to document the amount of its capital investment and its job creation, as well as its maintenance of the job requirement, throughout the period that the credit is available.

The qualifying business must affirmatively demonstrate to the satisfaction of the Department of Revenue that such business meets the job creation and capital investment requirements for the credit.

EFFECT OF THE BILL

The bill adds intellectual property as an asset that can be invested in for capital investment tax credits and provides specific expenses that are eligible capital costs related to the development of intellectual property. The development of intellectual property does not have to be intended for distribution solely in Florida, but at least 75 percent of forecasted revenues for the project must be from outside of Florida. The bill expands the definition of "qualifying project" so that intellectual property development is included. A qualifying intellectual property project may be made up of one or more projects and the annual wage of the project jobs in the state must be at least 150 percent of the average private sector wage in the area.

The time period in which the cumulative capital investment can be made has been expanded from "the beginning of construction...to the commencement of operations," so that now it is the beginning of construction or the start day of a project through the commencement of operations or the completion of the project. This will apply to all capital improvement tax credit projects and not just those that include intellectual property.

A new subsection has been added which allows the tax credits to be used as a credit against the tax imposed by ch. 220, F.S., against state taxes collected or accrued under ch. 212, F.S., or against a stated combination of the two taxes when the cumulative capital investment for one or more projects is an aggregate of at least $50 million per year for 3 years, and the capital investment for each individual project is at least $3.75 million. This applies only to capital improvement tax credit projects which include intellectual property development.

The credit granted will be equal to 20% of the eligible capital costs generated by the project. The credit can be used against the tax liability of the qualifying business and is limited by the tax liability on the tax return of the qualifying business. If the credit is not fully used in any one year because of insufficient tax liability, the unused amount may be transferred or used in any one year or years beginning with the completion date of the project and ending the 9th year after the completion date of the project. While credits may be transferred to another business, the business must use the credits in the year received.

Section 2. Innovation Incentive Program. (p. 11): This section does not affect the Department of Revenue.

Section 3. (p.11): This act shall take effect upon becoming a law.

2. **DOES THE DEPARTMENT EXPECT TO DEVELOP, ADOPT, MODIFY OR ELIMINATE ANY RULES, REGULATIONS, POLICIES, OR PROCEDURES?** ☒ YES ☐ NO

If yes, explain:	Both corporate income tax and sales and use tax rules would need to be updated to include the new credit and other provisions.
Rule(s) impacted (provide references to F.A.C., etc.):	12C-1.051, 12C-1.0191,12A-1.097

3. **WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?** N/A

4. **DOES THE BILL REQUIRE THE DEPARTMENT TO SUBMIT, MODIFY OR DELETE ANY REPORTS, STUDIES OR PLANS?** ☐ YES ☒ NO

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

5. **ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?** ☐ YES ☒ NO

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

6. **DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?** The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact, if any, to local governments.

7. **DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?**

Revenues:	The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact, if any, to state government.
Expenditures: ***(only expenditure impacts on the Department are identified)***	☒ YES ☐ NO ☐ YES, BUT INSIGNIFICANT ☐ UNABLE TO DETERMINE See Additional Comments section below if it is determined there is a significant operational impact to the Department.
Does the legislation contain an appropriation to the Department?	☐ YES ☒ NO

8. **DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?** The Department of Revenue does not conduct this analysis.

9. **DOES THE BILL INCREASE OR DECREASE TAXES, FEES OR FINES?** The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact on state and local government, if any.

TECHNOLOGY IMPACT

If any, see attached Fiscal Impact Analysis.

FEDERAL IMPACT

If any, see Additional Comments section below.

ADDITIONAL COMMENTS

10. **STATUTE(S) AFFECTED:** Sections 220.191 and 288.1089, F.S.

11. **HAS BILL LANGUAGE BEEN ANALYZED EARLIER THIS SESSION?** ☐ YES ☒ NO
If no, go to #12. If yes:

A. Identify bill number or source.

B. Were issues/problems identified? ☐ YES ☐ NO

a. If yes, have they been resolved? ☐ YES ☐ NO **If no, briefly explain.**

C. Are new issues/problems created? ☐ YES ☐ NO **If yes, briefly identify.**

12. **DOES THE BILL PRESENT DIFFICULTY IN IMPLEMENTATION, ADMINISTRATION OR ENFORCEMENT?** ☒ YES ☐ NO

If yes, describe administrative problems, technical errors, or other difficulties:

- The bill defines a qualifying intellectual property project as a project made up of one or more projects with different start and completion dates (lines 143-145).
  - Defining a qualifying intellectual property project using the phrase "one or more projects" is potentially confusing in that it is not clear if the cumulative capital investment of $50 million for one or more projects per year for 3 years, with the capital investment of each individual project is at least $3.75 million, is for one whole qualifying project or all qualifying projects established by the business (lines 216-227).
    - If the $3.75 million is for discrete tasks within the overall project, is the investment the total per year or for the duration of the project?
  - It is unclear how the credit would be calculated and when it would be calculated for a project when there are multiple projects with different start and completion dates that can be included in the project.
  - If a business has more than one qualifying project, is the business allowed to claim a credit for each qualifying project? So that a business with two qualifying projects may claim 40%?

- It is unclear in (3)(a) if the sum of the tax credits granted or tax credit granted per year is equal to 20% of eligible capital costs. It is unclear how long the credit can be granted? For example, (2)(a), a credit is granted annually for a period not to exceed 20 years.

- Would the taxpayer be required to prove that 75% of forecasted revenues for the project are from outside of Florida? If so, how would this be documented? Which agency would be responsible for certifying this? (lines 88-90)

- It is unclear how many transfers may be made each year and how many taxpayers the credit may be transferred to, or whether the taxpayers must be related. (lines 228-237)

- If the taxpayer were to take the credit at the "completion date" of the project, would this date need to be certified by the Department of Economic Opportunity? Would taxpayer need to choose at the time of application when it would begin to utilize the credit? Could taxpayer change its choice of when to begin utilizing the credit at any time?

- Similar corporate tax credit statutes that allow tax payers to take a credit against taxes imposed by ch. 212, F.S., have a sister provision in said chapter. For example:
  - The sister provision for s. 220.181, F.S., Enterprise zone jobs credit., is s. 212.096, F.S., Sales, rental, storage, use tax; enterprise zone jobs credit against sales tax.
  - The sister provisions for s. 220.1895, F.S., Rural Job Tax Credit and Urban High-Crime Area Job Tax Credit., are s. 212.097, F.S., Urban High-Crime Area Job Tax Credit Program., and s. 212.098, F.S., Rural Job Tax Credit Program.

13. OTHER:

- In subparagraphs (1)(b) and (c) (lines 28-40), it is unclear if it is the intent of the sponsor to expand the time period for all qualifying projects or to add a new time period just for intellectual property projects. The amendment of the current "beginning" and "ending" dates expands the time period for all qualifying projects. For example, architecture fees could potentially be included in capital investment costs.

  If the intent is to add a beginning and ending time frame for intellectual property development projects only, then the sponsor may wish to consider the following to align with the intent:

  > (b) "Cumulative capital investment" means the total capital investment in land, buildings, ~~and~~ equipment, and intellectual property made in connection with a qualifying project during the period from the beginning of construction of the project to the commencement of operations or for intellectual property projects, the start date through the completion date of the project.
  >
  > (c) "Eligible capital costs" means all expenses incurred by a qualifying business in connection with the acquisition, construction, installation, and equipping of a qualifying project during the period from the beginning of construction of the project to the commencement of operations or for intellectual property projects, the start date through the completion date of the project, including, but not limited to:

- It is unclear what is meant by "start date" and "completion date" of the project. Does the start date mean the date that project planning begins or the date when development work begins? Does the completion date mean when a developer has finished or when a project is delivered to a client?
  - Additionally, line 84 includes "cloud-based services that support the functionality of multiple applications," which indicates an ongoing project. How is the completion of this type of project defined?

- Subsection (1)(c)5. (lines 64-69). Language does not specify if the wages and salaries included are limited to wages and salaries of the project jobs.

- For the new project created in subsection (1)(h)4. (lines 143-148), the language does not include a minimum employment goal for the project, a minimum capital investment, or a time period in which the credit can be granted.

2020
DEPARTMENT OF REVENUE
FISCAL IMPACT ANALYSIS

Bill number SB 1268
Short title Capital Investment Tax Credit
Bill sponsor Senator Gruters

Date of Analysis: January 17, 2020
Agency Contact: Debbie Longman **Telephone:** (850) 617-8324

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Estimate amounts required to administer the bill's provisions by appropriation categories (Salaries & Benefits, OPS, Expenses, Operating Capital Outlay, etc.)

I. FISCAL IMPACT ON STATE AGENCY:	(FY 19-20) $ / FTE	(FY 20-21) $ / FTE	(FY 21-22) $ / FTE	(FY 22-23) $ / FTE
A. REVENUES:	**All revenue estimates will be provided by the Revenue Estimating Conference.**			
B. EXPENDITURES:				
1. Recurring	**$0**	**$0**	**$0**	**$0**
FTE				
Salaries				
OPS				
Expense				
HR Contract				
Contracted Services				
2. Non-Recurring	**$0**	**$91,200**	**$0**	**$0**
OPS				
Expense				
OCO				
Contracted Services		**$91,200**		
C. TOTAL:	**$0**	**$91,200**	**$0**	**$0**
GR				
TF				

II. EXPLANATION OF COST ANALYSIS (Include methodology and assumptions):

The proposed bill expands cumulative capital investment to include intellectual property and eligible capital costs to include the development of intellectual property, creating a new qualifying project type. The tax credit may be taken against corporate income tax, sales and use tax, or a combination of the two taxes. First 5 years the credit equals 5% of cumulative capital investment even though there may not be any income generated by or arising out of the project. Allows such entities to sell the credit for the first six years. Provides a unique carryover for these projects. Provides for an effective date of upon becoming a law.

Business Technology Office – System for Unified Tax (SUNTAX): FY 20/21 $37,200 + $54,000 vendor Baca, Stein, White and Associates, Inc. (BSWA) - (Non-Recurring)

The proposed bill would require approximately 400 contractor hours (at $93 per hour) and 1,408 in-house hours to provide the necessary modifications to Revenue's System for Unified Tax (SUNTAX). These hours would be utilized as follows:

400 Contractor Hours

- **Information Services SUNTAX Team** – Gather requirements and design; technical specifications; perform technical testing
  - CIT: modify load program, math audit code, credit tracking tables
  - SUT: modify load program, math audit code, credit tracking tables, test BSWA and DPS files
  - Distribution program
  - CIT file formats, DR-15 file format

1,408 In-House Hours

- **Revenue and Return Processing Team (552 hours)** – Gather requirements and design; functional specifications; perform functional testing
  - F-1120 eViewer Presentation
  - Image Management System (IMS): F-1120
  - Image Management System (IMS): F-1120X
  - SUT File and Pay
- **Receivables Management and Return Reconciliation Team (68 hours)** – Gather requirements and design; functional specifications; perform functional testing
  - Sales Order Logic: new credit lines in calculations on DR-15, F-1120, and F-1120X
  - Configuration: new credit line on DR-15
- **Electronic Data Interchange (EDI)/Extensible Markup Language (XML) Team (422 hours)** – Gather requirements and design; functional specifications; perform functional testing
  - SUT XML: XPath; Schema
  - CIT MeF: MeF102; Guide; Schema; XPath; SWD Test Cases
  - Alternative Forms
- **Data Support Services Team (64 hours)** – Gather requirements and design; functional specifications; perform functional testing
  - Modifications to existing CIT and SUT reports
  - Modifications to existing BW extractor of CIT and SUT data
- **Payment and Fund Distribution Team (36 hours)** – Gather requirements and design; functional specifications; perform functional testing
  - Updates to credit tracking table
- **Information Services SUNTAX Team (24 hours)** – Gather requirements and design; technical specifications; perform technical testing
  - Modifications to existing BW extractor of CIT and SUT data
- **Information Services .NET Team (242 hours)** – Gather requirements and design; perform technical testing
  - MeF batch job
  - Image Management System (IMS) MeF eViewer; RIS report; Oracle file package; SAP unload
  - F1120, AF1120, F1120X, Schedules I and V Corporate RIS templates
  - DR-15 SUT Tax Return RIS Template

Revenue's e-Services Applications – FY 20/21 $54,000 (Non-Recurring)

Revenue's e-Services vendor, Baca, Stein, White and Associates, Inc. (BSWA) will modify the SUT File and Pay website and the SUT SecureNet application. The required edits and coding changes to the web applications and databases are classified as significant and will cost an estimated $54,000 ($44,000 SUT File and Pay website and $10,000 SUT SecureNet).

Tax Information Publication (TIP)

A Tax Information Publication (TIP) will be posted to the Department's website using existing resources.

Forms

Implementation of this bill will require modifications to:

- The sales and use tax return instructions
- Corporate Income Tax Forms F-1120, and F-1120N
- The sales and use tax and corporate income tax website pages

Distribution

The proposed bill will require the creation and tracking of the proposed tax credit against corporate income tax, sales and use tax, or a combination of the two taxes. Existing personnel will assist with the review of applications and related correspondence, posting of the approved credits to SAP, and monitor the status of the tax year limitations.

Compliance Standards

Compliance Standards will update training materials and notify staff of the legislative changes. These changes can be made with existing resources.

Taxpayer Education and Communication

The Taxpayer Education and Communication team will accomplish necessary actions associated with this proposed legislation through normal operational activities. Internally, this may include alerts, job aids, or intranet updates for Department staff. Externally, this may include drafting, editing, and/or contributing to taxpayer educational materials, such as tutorials, brochures, webinars, information publications, and webpage updates.

III. Is an appropriation for the Department of Revenue provided in the bill? ☐ **YES** ☒ **NO**
If yes, provide amount(s) and fiscal year(s) for the appropriation.

IV. COMMENTS:

2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: DEPARTMENT OF ECONOMIC OPPORTUNITY

BILL INFORMATION	
BILL NUMBER:	SB 1268
BILL TITLE:	Capital Investment Tax Credit
BILL SPONSOR:	Senator Gruters
EFFECTIVE DATE:	Upon becoming a law.

COMMITTEES OF REFERENCE
1) Innovation, Industry, and Technology
2) Finance and Tax
3) Appropriations
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE
N/A

SIMILAR BILLS	
BILL NUMBER:	N/A
SPONSOR:	Click or tap here to enter text.

PREVIOUS LEGISLATION	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS	
BILL NUMBER:	N/A
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	January 9, 2020
LEAD AGENCY ANALYST:	Bianca Rubio
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
LEGAL ANALYST:	Adam Callaway
FISCAL ANALYST:	Susan Lincoln, Budget

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Senate Bill 1268 (the "bill") amends s. 220.191, F.S., by providing a credit against certain specified taxes to qualifying businesses that establish a qualifying project for the creation of intellectual property. The bill amends s. 288.1089, F.S., by amending the definition of "cumulative investment" to conform to changes made by the act.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Capital Investment Tax Credit ("CITC") is used to attract and grow capital-intensive industries in Florida (the "state"). The CITC is an annual credit, provided for up to 20 years, against the tax imposed by ch. 220, F.S., in an amount equal to 5 percent of the eligible capital costs generated by a qualifying project. The tax credit may be granted against only the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying project. The annual tax credit granted may not exceed certain specified percentages determined by the cumulative capital investment of the qualifying project.

"Qualifying projects" are defined as facilities in the state that meet one or more of the following criteria (a) a new or expanding facility which creates 100 new jobs and is in one of the high-impact sectors pursuant to s. 288.108(6), F.S., (b) a new or expanding facility engaged in a target industry specified in s. 288.106(2), F.S. and creates or retains at least 1,000 jobs, provided that at least 100 of the jobs are new and pay an average annual wage of at least 130 percent of the average private sector wage in the area and make a cumulative capital investment of at least $100 million, or (c) a new or expanding headquarters facility that locates in an enterprise zone and brownfield area and creates at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage and makes a cumulative capital investment in the State of at least $250 million.

"Cumulative capital investment" is defined as the total capital investment in land, buildings, and equipment made in connection with the qualifying project during the period from the beginning of construction of the project to the commencement of operations. A project that results in a cumulative capital investment of less than $25 million is not eligible for the CITC.

"Eligible capital costs" are defined as all expenses incurred by a qualifying business in connection with the acquisition, construction, installation, and equipping of a qualifying project during the period from the beginning of construction of the project to the commencement of operations.

2. EFFECT OF THE BILL:

The bill provides a tax credit against the tax liability of a qualifying business for the tax imposed by Chapter 220, F.S. (corporate income tax), state taxes collected or accrued under ch. 212, F.S. (sales and use tax), or against a stated combination of the two taxes for establishing a qualifying project for the creation of intellectual property. The cumulative capital investment of one or more projects must be an aggregate of at least $50 million per year for 3 years and the capital investment of each individual project is at least $3.75 million. The tax credit shall be granted in an amount equal to 20 percent of the eligible capital costs generated by the qualifying project.

If the credit granted is not fully used in one year because of insufficient tax liability on the part of the qualifying business, the unused amounts may be transferred or used in any one year or years beginning with the year of the completion date of the project and ending the 9th year after the completion date of the project. The transferred credits must be perfected according to certain specified requirements and may only be used in the year received and may not be carried forward or backward.

The bill amends the definition of a "qualifying project" to include a project in the state that meet one or more of the specified criteria. The bill inserts the criteria that for the creation of intellectual property, a qualifying project may be made up of one or more projects with different start and completion dates. The annual average wage of the project jobs in the state for the creation of intellectual property must be at least 150 percent of the average private sector wage in the area as defined in s. 288.106(2)(c), F.S.

The definition of "cumulative capital investment" is amended to include the total capital investment in intellectual property made in connection with a qualifying project during the period from the beginning of construction or the start date of the project to the commencement of operations or the completion of the project.

The Bill amends the definition of "eligible capital costs" to include all expenses incurred by a qualifying business in connection with the development of a qualifying project during the period from the beginning of construction or the start date of the project to the commencement of operations or the completion of the project. The bill specifies certain examples of the eligible capital costs for the development of intellectual property.

The bill defines "intellectual property" as a copyrightable project for which the eligible capital costs are principally paid directly or indirectly for the creation of the project. Potential examples of a copyrightable project are specified. The project may not be intended for distribution solely inside the state, and at least 75 percent of forecasted revenues for the project must be from outside the state.

The bill amends certain other subsections of s. 220.191, F.S., and the definition of "cumulative investment" in s. 288.1089, F.S., to conform to the changes made by the act.

The Bill provides that the act shall take effect upon becoming a law.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒

If yes, explain:	Not Applicable
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	Not Applicable

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Click or tap here to enter text.
Opponents and summary of position:	Click or tap here to enter text.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	The Bill does not require any reports or studies.
Date Due:	Not Applicable
Bill Section Number(s):	Not Applicable

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☒

Board:	The Bill does not make any new Gubernatorial appointments or changes to exiting boards, task forces, councils, or commissions.
Board Purpose:	Not Applicable
Who Appoints:	Not Applicable
Changes:	Not Applicable
Bill Section Number(s):	Not Applicable

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☒

Revenues:	The bill does not have any impact to local government revenues.
Expenditures:	The bill does not have any impact to local government expenditures.
Does the legislation increase local taxes or fees? If yes, explain.	The bill does not 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?	Not Applicable

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☒ N☐

Revenues:	The bill specifies CITC eligibility for certain qualifying businesses that establish a qualifying project for the creation of intellectual property. The credit can be against taxes collected under ch 220, F.S., against state taxes collected or accrued under ch 212, F.S., or a stated combination of the two taxes. EDR conference would have to estimate the impact if the bill is passed.
Expenditures:	The bill does not have any impact to state government expenditures.
Does the legislation contain a State Government appropriation?	The bill does not contain a state government appropriation.
If yes, was this appropriated last year?	Not Applicable

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☒ N☐

Revenues:	The bill does not have an impact to private sector revenues.
Expenditures:	If certified as a qualifying business a recipient that establishes a qualifying project for the creation of intellectual property and meets the specified requirements, may receive a CITC on its corporate income tax, state sales and use tax, or a stated combination of the two taxes. The tax credit shall be granted in an amount equal to 20 percent of the eligible capital costs generated by the qualifying project. Under certain specified conditions, a qualifying business with insufficient tax liability may transfer the unused amounts to another business.
Other:	Click or tap here to enter text.

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☒

If yes, explain impact.	The bill does not increase or decrease taxes, fees, or fines.
Bill Section Number:	Not Applicable

TECHNOLOGY IMPACT

1. **DOES THE BILL 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.	The bill does not impact the Department of Economic Opportunity's technology systems.

FEDERAL IMPACT

1. **DOES THE BILL 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.	The bill does not have a federal impact.

ADDITIONAL COMMENTS

Click or tap here to enter text.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	N/A

By Senator Gruters

23-01429A-20 20201268__

A bill to be entitled

An act relating to the capital investment tax credit; amending s. 220.191, F.S.; redefining terms; defining the term "intellectual property"; providing a credit against the corporate income tax, the sales and use tax, or a stated combination of the two taxes to a qualifying business that establishes a qualifying project for the creation of intellectual property which meets certain capital investment criteria; specifying the calculation of the credit; authorizing the carryover or transfer of credits, subject to certain conditions; conforming provisions to changes made by the act; amending s. 288.1089, F.S.; revising the definition of the term "cumulative investment" to conform to changes made by the act; providing an effective date.

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

Section 1. Section 220.191, Florida Statutes, is amended to read:

220.191 Capital investment tax credit.—

(1) DEFINITIONS.—As used in ~~For purposes of~~ this section, the term:

(a) "Commencement of operations" means the beginning of active operations by a qualifying business of the principal function for which a qualifying project was constructed.

(b) "Cumulative capital investment" means the total capital investment in land, buildings, ~~and~~ equipment, and intellectual

property made in connection with a qualifying project during the period from the beginning of construction or the start date of the project to the commencement of operations or the completion of the project, as applicable.

(c) "Eligible capital costs" means all expenses incurred by a qualifying business in connection with the acquisition, construction, installation, ~~and~~ equipping, and development of a qualifying project during the period from the beginning of construction or the start date of the project to the commencement of operations or the completion of the project, as applicable, including, but not limited to:

1. The costs of acquiring, constructing, installing, equipping, and financing a qualifying project, including all obligations incurred for labor and obligations to contractors, subcontractors, builders, and materialmen.

2. The costs of acquiring land or rights to land and any cost incidental thereto, including recording fees.

3. The costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, environmental mitigation, and supervision of construction, as well as the performance of all duties required by or consequent to the acquisition, construction, installation, and equipping of a qualifying project.

4. The costs associated with the installation of fixtures and equipment; surveys, including archaeological and environmental surveys; site tests and inspections; subsurface site work and excavation; removal of structures, roadways, and other surface obstructions; filling, grading, paving, and

provisions for drainage, storm water retention, and installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and offsite construction of utility extensions to the boundaries of the property.

5. For the development of intellectual property, the wages, salaries, or other compensation paid to legal residents of this state and the costs of newly purchased computer software and hardware unique to the project, including servers, data processing, and visualization technologies, which are located and used exclusively in this state for the project.

Eligible capital costs shall not include the cost of any property previously owned or leased by the qualifying business.

(d) "Income generated by or arising out of the qualifying project" means the qualifying project's annual taxable income as determined by generally accepted accounting principles and under s. 220.13.

(e) "Intellectual property" means a copyrightable project for which the eligible capital costs are principally paid directly or indirectly for the creation of the project. As used in this paragraph, the term "copyrightable project" includes, but is not limited to, a copyrightable software or multimedia application and its expansion content made available to an end user, internal development platforms that support the production of multiple applications, cloud-based services that support the functionality of multiple applications, and copyrighted projects registered with the United States Copyright Office which include digital visualization and sound synchronization technologies.

The project may not be intended for distribution solely inside this state, and at least 75 percent of forecasted revenues for the project must be from outside this state.

(f) "Jobs" means full-time equivalent positions, as that term is consistent with terms used by the Department of Economic Opportunity and the United States Department of Labor for purposes of reemployment assistance tax administration and employment estimation, resulting directly from a project in this state. The term does not include temporary construction jobs involved in the construction of the project facility.

(g) ~~(f)~~ "Qualifying business" means a business which establishes a qualifying project in this state and which is certified by the Department of Economic Opportunity to receive tax credits pursuant to this section.

(h) ~~(g)~~ "Qualifying project" means a facility or project in this state meeting one or more of the following criteria:

1. A new or expanding facility in this state which creates at least 100 new jobs in this state and is in one of the high-impact sectors identified by Enterprise Florida, Inc., and certified by the Department of Economic Opportunity pursuant to s. 288.108(6), including, but not limited to, aviation, aerospace, automotive, and silicon technology industries. However, between July 1, 2011, and June 30, 2014, the requirement that a facility be in a high-impact sector is waived for any otherwise eligible business from another state which locates all or a portion of its business to a Disproportionally Affected County. For purposes of this section, the term "Disproportionally Affected County" means Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa

Rosa County, Walton County, or Wakulla County.

2. A new or expanded facility in this state which is engaged in a target industry designated pursuant to the procedure specified in s. 288.106(2) and which is induced by this credit to create or retain at least 1,000 jobs in this state, provided that at least 100 of those jobs are new, pay an annual average wage of at least 130 percent of the average private sector wage in the area as defined in s. 288.106(2), and make a cumulative capital investment of at least $100 million. Jobs may be considered retained only if there is significant evidence that the loss of jobs is imminent. Notwithstanding subsection (2), annual credits against the tax imposed by this chapter may not exceed 50 percent of the increased annual corporate income tax liability or the premium tax liability generated by or arising out of a project qualifying under this subparagraph. A facility that qualifies under this subparagraph for an annual credit against the tax imposed by this chapter may take the tax credit for a period not to exceed 5 years.

3. A new or expanded headquarters facility in this state which locates in an enterprise zone and brownfield area and is induced by this credit to create at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage, as published by the Department of Economic Opportunity, and which new or expanded headquarters facility makes a cumulative capital investment in this state of at least $250 million.

4. For the creation of intellectual property, a qualifying project may be made up of one or more projects with different start and completion dates. The annual average wage of the

project jobs in this state must be at least 150 percent of the average private sector wage in the area as defined in s. 288.106(2)(c).

(2)(a) An annual credit against the tax imposed by this chapter shall be granted to any qualifying business in an amount equal to 5 percent of the eligible capital costs generated by a qualifying project, for a period not to exceed 20 years beginning with the commencement of operations of the project. Unless assigned as described in this subsection, the tax credit shall be granted against only the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits provided pursuant to this section shall not exceed 100 percent of the eligible capital costs of the project. In no event may any credit granted under this section be carried forward or backward by any qualifying business with respect to a subsequent or prior year. The annual tax credit granted under this section shall not exceed the following percentages of the annual corporate income tax liability or the premium tax liability generated by or arising out of a qualifying project:

1. One hundred percent for a qualifying project which results in a cumulative capital investment of at least $100 million.

2. Seventy-five percent for a qualifying project which results in a cumulative capital investment of at least $50 million but less than $100 million.

3. Fifty percent for a qualifying project which results in a cumulative capital investment of at least $25 million but less than $50 million.

(b) A qualifying project which results in a cumulative capital investment of less than $25 million is not eligible for the capital investment tax credit. An insurance company claiming a credit against premium tax liability under this program shall not be required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such credit. Because credits under this section are available to an insurance company, s. 624.5091 does not limit such credit in any manner.

(c) A qualifying business that establishes a qualifying project that includes locating a new solar panel manufacturing facility in this state that generates a minimum of 400 jobs within 6 months after commencement of operations with an average salary of at least $50,000 may assign or transfer the annual credit, or any portion thereof, granted under this section to any other business. However, the amount of the tax credit that may be transferred in any year shall be the lesser of the qualifying business's state corporate income tax liability for that year, as limited by the percentages applicable under paragraph (a) and as calculated prior to taking any credit pursuant to this section, or the credit amount granted for that year. A business receiving the transferred or assigned credits may use the credits only in the year received, and the credits may not be carried forward or backward. To perfect the transfer, the transferor shall provide the department with a written transfer statement notifying the department of the transferor's intent to transfer the tax credits to the transferee; the date the transfer is effective; the transferee's name, address, and federal taxpayer identification number; the tax period; and the amount of tax credits to be transferred. The department shall,

upon receipt of a transfer statement conforming to the requirements of this paragraph, provide the transferee with a certificate reflecting the tax credit amounts transferred. A copy of the certificate must be attached to each tax return for which the transferee seeks to apply such tax credits.

(d) If the credit granted under subparagraph (a)1. is not fully used in any one year because of insufficient tax liability on the part of the qualifying business, the unused amounts may be used in any one year or years beginning with the 21st year after the commencement of operations of the project and ending the 30th year after the commencement of operations of the project.

(3)(a) Notwithstanding subsection (2), a credit against the tax imposed by this chapter, against state taxes collected or accrued under chapter 212, or against a stated combination of the two taxes shall be granted to a qualifying business that establishes a qualifying project pursuant to subparagraph (1)(h)4. for which the cumulative capital investment of one or more projects is an aggregate of at least $50 million per year for 3 years, and the capital investment of each individual project is at least $3.75 million. The tax credit shall be granted in an amount equal to 20 percent of the eligible capital costs generated by the qualifying project. The tax credit shall be granted against the tax liability of the qualifying business.

(b) If the credit granted under this subsection is not fully used in 1 year because of insufficient tax liability on the part of the qualifying business, the unused amounts may be transferred or used in any one year or years beginning with the year of the completion date of the project and ending the 9th

year after the completion date of the project. A business receiving the transferred credits may use the credits only in the year received, and the credits may not be carried forward or backward. A transfer must be perfected in accordance with the requirements of paragraph (2)(c).

(4)(a) Notwithstanding subsection (2), an annual credit against the tax imposed by this chapter shall be granted to a qualifying business which establishes a qualifying project pursuant to subparagraph (1)(h)3. ~~(1)(g)3.~~, in an amount equal to the lesser of $15 million or 5 percent of the eligible capital costs made in connection with a qualifying project, for a period not to exceed 20 years beginning with the commencement of operations of the project. The tax credit shall be granted against the corporate income tax liability of the qualifying business and as further provided in paragraph (c). The total tax credit provided pursuant to this subsection shall be equal to no more than 100 percent of the eligible capital costs of the qualifying project.

(b) If the credit granted under this subsection is not fully used in any one year because of insufficient tax liability on the part of the qualifying business, the unused amount may be carried forward for a period not to exceed 20 years after the commencement of operations of the project. The carryover credit may be used in a subsequent year when the tax imposed by this chapter for that year exceeds the credit for which the qualifying business is eligible in that year under this subsection after applying the other credits and unused carryovers in the order provided by s. 220.02(8).

(c) The credit granted under this subsection may be used in

whole or in part by the qualifying business or any corporation that is either a member of that qualifying business's affiliated group of corporations, is a related entity taxable as a cooperative under subchapter T of the Internal Revenue Code, or, if the qualifying business is an entity taxable as a cooperative under subchapter T of the Internal Revenue Code, is related to the qualifying business. Any entity related to the qualifying business may continue to file as a member of a Florida-nexus consolidated group pursuant to a prior election made under s. 220.131(1), Florida Statutes (1985), even if the parent of the group changes due to a direct or indirect acquisition of the former common parent of the group. Any credit can be used by any of the affiliated companies or related entities referenced in this paragraph to the same extent as it could have been used by the qualifying business. However, any such use shall not operate to increase the amount of the credit or extend the period within which the credit must be used.

(5) ~~(4)~~ Prior to receiving tax credits pursuant to this section, a qualifying business must achieve and maintain the minimum employment goals beginning with the commencement of operations or the completion date of ~~at~~ a qualifying project and continuing each year thereafter during which tax credits are available pursuant to this section.

(6) ~~(5)~~ Applications shall be reviewed and certified pursuant to s. 288.061. The Department of Economic Opportunity, upon a recommendation by Enterprise Florida, Inc., shall first certify a business as eligible to receive tax credits pursuant to this section prior to the commencement of operations or the completion date of a qualifying project, and such certification

shall be transmitted to the Department of Revenue. Upon receipt of the certification, the Department of Revenue shall enter into a written agreement with the qualifying business specifying, at a minimum, the method by which income generated by or arising out of the qualifying project will be determined.

(7) ~~(6)~~ The Department of Economic Opportunity, in consultation with Enterprise Florida, Inc., is authorized to develop the necessary guidelines and application materials for the certification process described in subsection (6) ~~(5)~~.

(8) ~~(7)~~ It shall be the responsibility of the qualifying business to affirmatively demonstrate to the satisfaction of the Department of Revenue that such business meets the job creation and capital investment requirements of this section.

(9) ~~(8)~~ The Department of Revenue may specify by rule the methods by which a project's pro forma annual taxable income is determined.

Section 2. Paragraph (d) of subsection (2) of section 288.1089, Florida Statutes, is amended to read:

288.1089 Innovation Incentive Program.—

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

(d) "Cumulative investment" means cumulative capital investment and all eligible capital costs, as defined in former s. 220.191, Florida Statutes 2019.

Section 3. This act shall take effect upon becoming a law.

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 Innovation, Industry, and Technology

BILL:	SB 1084
INTRODUCER:	Senators Diaz and Montford
SUBJECT:	Emotional Support Animals
DATE:	February 10, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Becker	Becker	AG	**Favorable**
2.	Kraemer	Imhof	IT	**Favorable**
3.			RC	

I. Summary:

SB 1084 prohibits a landlord, to the extent required by federal law, rule, or regulation, to deny housing to a person with a disability or a disability-related need who has an animal that is required as support. It defines emotional support animal as an animal that is not required to be trained to assist a person with a disability but, by virtue of its presence, provides support to alleviate one or more identified symptoms or effects of a person's disability.

The bill prohibits a landlord from charging a person with an emotional support animal additional fees. It does allow a landlord to prohibit the animal if it poses a direct threat to the safety, health, or property of others and to request certain written documentation prepared by a health care practitioner[1] in a format prescribed in rule by the Department of Health. The documentation may not be prepared by a health care practitioner whose exclusive service is to prepare documentation in exchange for a fee. The landlord may also require proof of compliance with state and local licensing and vaccination requirements.

Under the bill, a person who falsifies written documentation or knowingly or willfully misrepresents the use of an emotional support animal commits a misdemeanor of the second degree, which could result in incarceration for 60 days, a fine of $500, or both. The bill requires such person to perform 30 hours of community service for an organization that serves individual with disabilities. It makes an emotional support animal's owner liable for any damages caused by the animal and removes landlord liability for damage done by an authorized emotional support

[1] Section 456.001(4), F.S., defines the term "health care practitioner" to include persons licensed or certified as an acupuncturist, physician, osteopathic physician, chiropractor, podiatric physician, naturopathic practitioner, optometrist, registered and certified nurse, pharmacist, dentist, dental hygienist, midwife, speech and language pathologist, audiologist, nursing home administrator, occupational therapist, respiratory therapist, dietetics and nutrition practitioner, athletic trainer, orthoptist, prosthetist, electrologist, massage therapist, clinical laboratory scientist and personnel, medical physicist, optician, physical therapist, psychologist, hypnotist, sex therapist, clinical social worker, marriage and family therapist, and mental health counselor.

animal. The bill expressly states that the guidelines for emotional support animals do not apply to service animals.

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

II. Present Situation:

Americans with Disabilities Act

The Americans with Disabilities Act (ADA)[2] prohibits discrimination against individuals with disabilities[3] in employment,[4] in the provision of public services,[5] and in public accommodation.[6] One of the requirements of the ADA is that public accommodation or public entity provide reasonable accommodations to disabled individuals accompanied by a service animal in all areas that are open to the public.[7]

A "service animal" is defined as a dog that is individually trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.[8] The work or tasks performed by a service dog must be directly related to the individual's disability.[9] Emotional support, comfort, and companionship provided by a dog, even for therapeutic or medical purposes, are insufficient to classify it as a service animal.[10]

Service dogs must be harnessed or leashed, unless doing so interferes with the dog's work or the individual's disability prevents doing so.[11] A person with a disability cannot be asked to remove his or her service dog from the premises, unless it is out of control and the dog's handler does not take action to control it, or if the dog is not housebroken.[12] However, if the dog is removed under such circumstances, the public accommodation or public entity must still allow the individual with a disability the opportunity to remain on the premises of the public accommodation or public entity without the service dog.[13]

Generally, when it is clear that a dog is trained to do work or perform tasks (such as a guide dog), a public accommodation or public entity may not ask about the necessity of the service dog. If it is not obvious what service or task the dog is providing, extremely limited questions are allowed: staff may only ask if a service dog is required because of a disability, and what tasks the

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[2] 42 U.S.C. s. 12101 *et seq.*
[3] Under the ADA, a disability is broadly defined to mean a physical or mental impairment that substantially limits the major life activities of an individual. 42 U.S.C. s. 12102(1)(a).
[4] 42 U.S.C. s. 12112.
[5] 42 U.S.C. s. 12132.
[6] 42 U.S.C. s. 12182. Under the ADA, a "public entity" includes any state or local government, any department or agency of state or local government, and certain commuter authorities. *See* 42 U.S.C. s. 12131.
[7] 28 C.F.R. ss. 36.302(a) and (c)(7) and 35.136(a) and (g).
[8] 28 C.F.R. ss. 35.104 and 36.104.
[9] *Id.*
[10] *Id.*; ADA National Network, *Service Animals and Emotional Support Animals: Where are they allowed and under what conditions?* 3 (2014), *available at* http://adata.org/sites/adata.org/files/files/Service_Animal_Booklet_2014(1).pdf (last visited Jan. 28, 2020).
[11] 28 C.F.R. ss. 35.136(d) and 36.302(c)(4).
[12] 28 C.F.R. ss. 35.136(b) and 36.302(c)(2).
[13] 28 C.F.R. ss. 35.136(c) and 36.302(c)(3).

dog has been trained to perform.[14] Any other questions, including the nature and extent of the person's disability or medical documentation, are prohibited.[15]

Although the definition of a service animal is limited to dogs, the ADA contains an additional provision related to miniature horses that have been individually trained to work or perform tasks for people with disabilities.[16] Miniatures horses are an alternative service animal for individuals with disabilities who may be allergic to dogs; miniature horses also have life spans considerably longer than dogs and are generally stronger than most dogs.[17] Similar to the requirements for service dogs, public accommodations and public entities must permit the use of a miniature horse by a person with a disability where reasonable. In determining whether permitting a miniature horse is reasonable, a facility must consider four factors: whether the miniature horse is housebroken; whether the miniature horse is under the owner's control; whether the facility can accommodate the miniature horse's type, size, and weight; and whether the miniature horse's presence will compromise safety requirements.[18]

If a public accommodation or public entity violates the ADA, a private party may file suit to obtain a court order to stop the violation. No monetary damages will be available in such suits; however, reasonable attorney's fee may be awarded.[19] Individuals may also file complaints with the U.S. Attorney General, who is authorized to file lawsuits in cases of general public importance or where a "pattern or practice" of discrimination is alleged. In suits by the Attorney General, monetary damages and civil penalties may be awarded. Civil penalties may not exceed $50,000 for a first violation or $100,000 for any subsequent violation.[20]

Fair Housing Act

The federal Fair Housing Act (federal FHA)[21] prohibits discrimination against a person with a disability in the sale or rental of housing.[22] Similar to the ADA, the federal FHA also requires a landlord to provide reasonable accommodations, including permitting the use of service animals, to a person with a disability.[23] However, unlike the ADA which does not require reasonable accommodations for emotional support animals, accommodation of untrained emotional support animals may be required under the federal FHA, if such an accommodation is reasonably

[14] 28 C.F.R. ss. 35.136(f) and 36.302(c)(6).
[15] *Id.*
[16] 28 C.F.R. ss. 35.136(i) and 36.302(c)(9). Miniature horses generally range in height from 2 to 3 feet to the shoulders and weigh between 70 and 100 pounds. U.S. Dep't of Justice, Civil Rights Division, *Service Animals*, 3 (July 2011), *available at* http://www.ada.gov/service_animals_2010.pdf (last visited Jan. 28, 2020).
[17] U.S. Dep't. of Justice, *Americans with Disabilities Act Title III Regulations: Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 96 (Sept. 15, 2010) *available at* http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.pdf (last visited Jan. 28, 2020).
[18] 28 C.F.R. ss. 35.136(i) and 36.302(c)(9)ii.
[19] 42 U.S.C. ss. 12188 and 2000a-3.
[20] 42 U.S.C. s. 12188.
[21] 42 U.S.C. s. 3601 *et seq.*
[22] 42 U.S.C. s. 3604(f).
[23] *Id.*; 24 C.F.R. s. 5.303.

necessary to allow a person with a handicap an equal opportunity to enjoy and use housing.[24] A reasonable accommodation may include waiving a no-pet rule or a pet deposit.[25]

A landlord may not ask about the existence, nature, and extent of a person's disability. However, an individual with a disability who requests a reasonable accommodation may be asked to provide documentation for proper review of the accommodation request. A landlord may ask a person to certify, in writing, that the tenant or a member of his or her family is a person with a disability; the need for the animal to assist the person with that specific disability; and that the animal actually assists the person with a disability.[26]

The United States Department of Housing and Urban Development (HUD) recently released guidance dated January 28, 2020 clarifying how housing providers can comply with the FHA when assessing a person's request to have an animal as a reasonable accommodation.[27]

Florida Service Animal Law

Section 413.08, F.S., is Florida's companion to the ADA and federal FHA provisions regarding service animals.

Section 413.08, F.S., provides that an individual with a disability is entitled to equal access in public accommodations,[28] public employment,[29] and housing.[30] An "individual with a disability" means a person who has a physical or mental impairment that substantially limits one or more major life activities of the individual.[31]

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[24] Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63834, 63836 (Oct. 27, 2008); *see, Fair Housing of the Dakotas, Inc. v. Goldmark Prop. Mgmt., Inc.*, 778 F. Supp. 2d 1028, 1036 (D.N.D. 2011) (finding that "the FHA encompasses all types of assistance animals regardless of training . . . ."); *Overlook Mut. Homes, Inc. v. Spencer*, 666 F. Supp. 2d 850, 859 (S.D. Ohio 2009).

[25] *See* 24 C.F.R. s. 100.204 (Example (1)); *Intermountain Fair Housing Council v. CVE Falls Park, L.L.C.*, 2011 WL 2945824 (D. Idaho 2011); *Bronk v. Ineichen*, 54 F. 3d 425, 429 (7th Cir. 1995).

[26] 73 Fed. Reg. 63834.

[27] *See* HUD's press release (HUD No. 20-013) relating to the guidance at https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_013 (last visited Jan. 30, 2020) and HUD's Office of Fair Housing and Equal Opportunity notice (FHEO-2020-01) at https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf (last visited Jan. 30, 2020). In FHEO-2020-01), the two sections of the notice are explained as follows. "The first [section], "Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act," recommends a set of best practices for complying with the FHA when assessing accommodation requests involving animals to assist housing providers and help them avoid violations of the FHA. The second section to the notice, "Guidance on Documenting an Individual's Need for Assistance Animals in Housing," provides guidance on information that an individual seeking a reasonable accommodation for an assistance animal may need to provide to a housing provider about his or her disability-related need for the requested accommodation, including supporting information from a health care professional." *Id*. at p. 2.

[28] Section 413.08(1)(c), F.S., defines a "public accommodation" to means "a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; a timeshare that is a transient public lodging […]; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. The term does not include air carriers…."

[29] Sections 413.08(5) and (7), F.S.

[30] Section 413.08(6), F.S.

[31] Section 413.08(1)(b), F.S.

Under s. 413.08, F.S., an individual with a disability has the right to be accompanied by a trained service animal in all areas of public accommodations that the public is normally allowed to occupy.[32] Section 413.08, F.S., requires a public accommodation to modify its policies, practices, and procedures to permit use of a service animal by an individual with a disability. However, the public accommodation is not required to modify or provide any vehicle, premises, facility, or service to a higher degree of accommodation than is required for a non-disabled person.

Section 413.08(1)(d), F.S., in part, defines "service animal" to mean "an animal that is trained to perform tasks for an individual with a disability." Respecting access to or enjoyment of public accommodations, the term "service animal" is limited to mean a dog or miniature horse. The term "service animal" is not limited to a dog or miniature horse in the context of an employment-related accommodation.

Similar to the ADA, s. 413.08, F.S., provides that documentation that a service animal is trained is not a precondition for providing service, though a public accommodation may ask if an animal is a service animal required because of a disability and what tasks it is trained to perform.[33] Additionally, a public accommodation:

- May not ask about the nature or extent of a disability;[34]
- May require the service animal to be under the control of its handler and have a harness, leash, or other tether;[35]
- May not impose a deposit or surcharge on an individual with a disability as a precondition to providing service to one accompanied by a service animal, even if a deposit is routinely required for pets;[36]
- May hold an individual with a disability liable for damage caused by a service animal if it is the regular policy and practice of the public accommodation to charge nondisabled persons for damages caused by their pets;[37]
- Is not required to provide care or food or a special location for the service animal or assistance with removing animal excrement;[38] and
- May exclude or remove a service animal from the premises if the animal is out of control and the animal's handler does not take effective action to control it, the animal is not housebroken, or the animal's behavior poses a direct threat to the health and safety of others.[39]

Like the federal FHA, under s. 413.08, F.S., an individual with a disability is entitled to rent or purchase any housing accommodations subject to the same conditions that are applicable to everyone.[40] An individual with a disability who has a service animal is entitled to full and equal

[32] Sections 413.08(3), F.S.
[33] Sections 413.08(3)(b), F.S.
[34] *Id.*
[35] Sections 413.08(3)(a), F.S.
[36] Sections 413.08(3)(c), F.S.
[37] Sections 413.08(3)(d), F.S.
[38] Sections 413.08(3)(e), F.S.
[39] Sections 413.08(3)(f), F.S., which also provides allergies and fear of animals are not valid reasons for denying access or refusing service to an individual with a service animal. Further, if a service animal is excluded or removed for being a direct threat to others, the public accommodation must provide the individual access to the public accommodation without the service animal.
[40] Sections 413.08(6), F.S.

access to all housing accommodations, and may not be required to pay extra compensation for the service animal.[41]

Section 413.08(9), F.S., provides that any person who denies or interferes with the rights of a person with a disability or an individual training a service animal commits a second-degree misdemeanor.[42]

Emotional Support Animals

According to the United States Department of Housing and Urban Development (HUD),[43] an emotional support animal (ESA) is not a pet, but includes any animal providing emotional support to a person with a disability.[44] Unlike a service animal, an ESA is not trained to work or perform certain tasks, but provides emotional support alleviating one or more symptoms or effects of a person's disability.[45] The most common type of ESA is a dog; however, other species of animals may be an ESA.

According to HUD, "ESAs provide very private functions for persons with mental and emotional disabilities. Specifically, ESAs by their very nature and without training, may relieve depression and anxiety, and help reduce stress-induced pain in persons with certain medical conditions affected by stress."[46]

ESAs provide therapeutic support to relieve symptoms of psychiatric disabilities, including depression, anxiety, and post-traumatic stress disorder.[47]

III. Effect of Proposed Changes:

Section 1 creates s. 760.27, F.S., to amend Florida's Fair Housing Act[48] to prohibit discrimination in the rental of a dwelling to persons with a disability who use an emotional support animal (ESA).

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[41] Sections 413.08(6)(b), F.S. Proof of compliance with vaccination requirements may be requested by certain housing accommodations. *Id*.

[42] Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.

[43] HUD is the Federal agency responsible for national policy and programs addressing America's housing needs, improving and developing the nation's communities, and enforcing fair housing laws, including violations of the Fair Housing Act. HUD.GOV, *Questions and Answers about HUD,* https://www.hud.gov/about/qaintro (last visited Jan. 28, 2020).

[44] U.S. Department of Housing and Urban Development, *FEHO Notice: FHEO-2013-01,* (Apr. 25, 2013), https://archives.hud.gov/news/2013/servanimals_ntcfheo2013-01.pdf (last visited Jan. 28, 2020).

[45] *Id.*

[46] *Id.*

[47] Brazelon Center for Mental Health Law, *Right to Emotional Support Animals in "No Pet" Housing*, (Jun. 16, 2017), http://www.bazelon.org/wp-content/uploads/2017/04/2017-06-16-Emotional-Support-Animal-Fact-Sheet-for-Website-final.pdf (last visited Jan. 28, 2020).

[48] Florida's Fair Housing Act (ss. 760.20 through 760.37, F.S.) is patterned after the federal FHA. *See Bhogaita v. Altamonte Heights Condo. Ass'n*, 765 F.3d 1277, 1285 (11th Cir. 2014) ("The [federal] FHA and the Florida Fair Housing Act are substantively identical, and therefore the same legal analysis applies to each.").

The bill defines the term:

- "Emotional support animal" as an animal that does not require training to do specific work or perform special tasks for a person with a disability but, by virtue of its presence, provides support to alleviate one or more identified symptoms or effects of a person's disability.
- "Landlord" as the owner or lessor of a dwelling.

Under the bill, a landlord, to the extent required by federal law, rule, or regulation, may not:

- Discriminate in the rental of a dwelling to a person with a disability or a disability-related need for an ESA; and
- Charge additional fees to a person with an ESA.

The bill allows a landlord to:

- Prohibit an ESA if the animal poses a direct threat to the safety, health, or property of others which cannot be reduced or eliminated by another reasonable accommodation;
- Request additional information, prepared by a health care practitioner, regarding each emotional support animal when a person's disability or disability-related need is not apparent. The requested documentation must verify that the renter has a disability or a disability-related need, has been under the practitioner's care or treatment for such disability or need, and the animal provides support to alleviate one or more identified symptoms or effects of the person's disability or disability-related need. If more than one animal is to be kept in the dwelling, the documentation must establish the need for each animal. The documentation must be prepared by a health care practitioner, as defined in s. 456.001, F.S.,[49] in a format prescribed by the Department of Health. The documentation may not be prepared by a health care practitioner whose exclusive service is to prepare documentation in exchange for a fee. The Department of Health must establish the format a health care practitioner must follow when providing documentation to a patient and must adopt rules relating to the ESA documentation requirements; and
- Require proof of compliance with state and local licensing and vaccination requirements.

A person who falsifies written documentation for an ESA or knowingly or willfully misrepresents being qualified to use an emotional support animal commits a misdemeanor of the second degree, which could result in incarceration for 60 days, a fine of $500, or both.[50] The person must also perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity or organization at the discretion of the court, to be completed within six months after conviction.

Under the bill, an ESA's owner is liable for any damages caused by the animal and the landlord is not liable for damage done by an ESA that is authorized as a reasonable accommodation under

[49] Section 456.001(4), F.S., defines the term "health care practitioner" to include persons licensed or certified as an acupuncturist, physician, osteopathic physician, chiropractor, podiatric physician, naturopathic practitioner, optometrist, registered and certified nurse, pharmacist, dentist, dental hygienist, midwife, speech and language pathologist, audiologist, nursing home administrator, occupational therapist, respiratory therapist, dietetics and nutrition practitioner, athletic trainer, orthoptist, prosthetist, electrologist, massage therapist, clinical laboratory scientist and personnel, medical physicist, optician, physical therapist, psychologist, hypnotist, sex therapist, clinical social worker, marriage and family therapist, and mental health counselor.

[50] *See*, ss. 775.082 and 775.083, F.S., for the penalties applicable to a second degree misdemeanor.

this section, the federal FHA, s. 504 of the Rehabilitation Act of 1973,[51] or any other federal, state, or local law.

The bill expressly provides that the guidelines for ESAs do not apply to service animals.

Section 2 amends s. 413.08, F.S., to make technical and clarifying changes.

Section 3 amends s. 419.001, F.S., to make conform terminology to changes made by the bill. It also replaces a reference to "handicap" with "disability."

Section 4 amends s. 760.22, F.S., to replace the term "handicap" with the term "disability."

Section 5 amends s. 760.23, F.S., to replace the term "handicap" with the term "disability." It also replaces the term "handicapped person" with the term "person with a disability."

Section 6 amends s. 760.24, F.S., to replace the term "handicap" with the term "disability."

Section 7 amends s. 760.25, F.S., to replace the term "handicap" with the term "disability."

Section 8 amends s. 760.29, F.S., to include s. 760.27, F.S., created by the bill, in the list of exemptions under the Fair Housing Act. It also replaces the term "handicap" with the term "disability."

Section 9 amends s. 760.31, F.S., to replace the term "handicapped" with the term "for persons with disabilities."

Section 10 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[51] Section 504 of the 1973 Rehabilitation Act (Pub. L. 93–112, title V, s. 504) prohibits discrimination against people with disabilities in programs that receive federal financial assistance. This act and subsequent amendments are codified in 29 U.S.C. s. 794, relating to nondiscrimination under federal grants and programs.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If requested by a landlord, a renter of a dwelling who has a disability or a disability-related need who has one or more ESAs may be required pay for written documentation that uses the specified DOH form, prepared by a health care practitioner that has cared for or treated the renter for such disability or need. This may create a barrier to renters who do not have the means to access and be cared for or treated by such a health care practitioner, or to obtain the documentation in the specified DOH format.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 1084 provides that a landlord may request additional information regarding each emotional support animal when a person's disability or disability-related need is not apparent. The requested documentation must be issued by a health care practitioner as defined in s. 456.001, F.S., which results in an extensive list of eligible health care practitioners authorized to issue such documentation.

Section 456.001(4), F.S., defines the term "health care practitioner" to include persons licensed or certified under 19 practice acts, which cover persons licensed or certified as an acupuncturist, physician, osteopathic physician, chiropractor, podiatric physician, naturopathic practitioner, optometrist, registered and certified nurse, pharmacist, dentist, dental hygienist, midwife, speech and language pathologist, audiologist, nursing home administrator, occupational therapist, respiratory therapist, dietetics and nutrition practitioner, athletic trainer, orthoptist, prosthetist, electrologist, massage therapist, clinical laboratory scientist and personnel, medical physicist, optician, physical therapist, psychologist, hypnotist, sex therapist, clinical social worker, marriage and family therapist, and mental health counselor.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 413.08, 419.001, 760.22, 760.23, 760.24, 760.25, 760.29, and 760.31.

This bill creates section 760.27 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.

The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry and Technology

Subject: Committee Agenda Request

Date: January 27, 2020

I respectfully request that **Senate Bill # 1084**, relating to Emotional Support Animals, be placed on the:

☐ Committee agenda at your earliest possible convenience.

☒ Next committee agenda.

Senator Manny Diaz, Jr.
Florida Senate, District 36

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/20
Meeting Date

1084
Bill Number (if applicable)

Topic Emotional Support Animals

Amendment Barcode (if applicable)

Name Travis Moore

Job Title

Address P.O. Box 2020
Street

St. Petersburg FL 33731
City *State* *Zip*

Phone 727.421.6902

Email travis@moore-relations.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Community Associations Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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)

Meeting Date	Bill Number (if applicable)
	1084

Topic ESA — Amendment Barcode (if applicable)

Name Christopher Turner

Job Title Deputy Director Legislative Affairs

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

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

Representing Florida Commission on Human Relations

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)

2/10/2020
Meeting Date

1084
Bill Number (if applicable)

Topic Emotional Support Animals

Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title

Address 104 W Jefferson Street
Street
Tallahassee, FL 32301
City *State* *Zip*

Phone (850) 224-3427

Email kelly@rlbookpa.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Apartment 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)

2-10-20
Meeting Date

1084
Bill Number (if applicable)

Topic Emotional Support Animals

Amendment Barcode (if applicable)

Name Andrew Rutledge

Job Title Policy Rep

Address 200 N. Monroe St
Street

Tallahassee FL 32312
City *State* *Zip*

Phone 850-244-1460

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Realtors

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

COMMITTEE VOTE RECORD

COMMITTEE: Innovation, Industry, and Technology
ITEM: SB 1084
FINAL ACTION: Favorable
MEETING DATE: Monday, February 10, 2020
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Building

FINAL VOTE			2/03/2020 1 Not considered					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bracy						
X		Bradley						
X		Brandes						
X		Braynon						
X		Farmer						
X		Gibson						
X		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
10	0	**TOTALS**						
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By Senator Diaz

36-00536B-20 20201084__

A bill to be entitled

An act relating to emotional support animals; creating s. 760.27, F.S.; providing definitions; prohibiting discrimination in the rental of a dwelling to a person with a disability or a disability-related need who has an emotional support animal; prohibiting a landlord from requiring such person to pay extra compensation for such animal; providing an exception; authorizing a landlord to request certain written documentation under certain circumstances; authorizing the Department of Health to adopt rules; prohibiting the falsification of written documentation or other misrepresentation regarding the use of an emotional support animal; providing penalties; specifying that a person with a disability or a disability-related need is liable for certain damage done by her or his emotional support animal; exempting a landlord from certain liability; providing applicability; amending s. 413.08, F.S.; providing applicability; amending s. 419.001, F.S.; conforming terminology to changes made by the act; conforming a cross-reference; amending s. 760.22, F.S.; updating terminology; amending s. 760.29, F.S.; extending specified exemptions to conform to changes made by the act; conforming terminology to changes made by the act; amending ss. 760.23, 760.24, 760.25, and 760.31, F.S.; conforming terminology to changes made by the act; providing an effective date.

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

Section 1. Section 760.27, Florida Statutes, is created to read:

760.27 Prohibited discrimination in the rental of housing to persons with a disability or disability-related need who use an emotional support animal.—

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

(a) "Emotional support animal" means an animal that does not require training to do specific work or perform special tasks for a person with a disability but, by virtue of its presence, provides support to alleviate one or more identified symptoms or effects of a person's disability.

(b) "Landlord" means the owner or lessor of a dwelling.

(2) To the extent required by federal law, rule, or regulation, it is unlawful to discriminate in the rental of a dwelling to a person with a disability or disability-related need who has or obtains an emotional support animal. A person with a disability or a disability-related need must, upon request, be allowed to keep such animal in the dwelling as a reasonable accommodation in housing, and such person may not be required to pay extra compensation for such animal.

(3) Unless otherwise prohibited by federal law, rule, or regulation, a landlord may:

(a) Prohibit an emotional support animal if such animal poses a direct threat to the safety or health of others or poses a direct threat of physical damage to the property of others which cannot be reduced or eliminated by another reasonable accommodation.

(b) If a person's disability or disability-related need is not readily apparent, request written documentation prepared by a health care practitioner, as defined in s. 456.001, which verifies that the person has a disability or a disability-related need and has been under the practitioner's care or treatment for such disability or need, and the animal provides support to alleviate one or more identified symptoms or effects of the person's disability or disability-related need. If a person requests to keep more than one emotional support animal, the landlord may request such written documentation establishing the need for each animal. The written documentation must be prepared in a format prescribed by the Department of Health in rule and may not be prepared by a health care practitioner whose exclusive service to the person with a disability is preparation of the written documentation in exchange for a fee. The department may adopt rules to administer this paragraph.

(c) Require proof of compliance with state and local requirements for licensing and vaccination of an emotional support animal.

(4) A person who falsifies written documentation, as described in subsection (3), for an emotional support animal or otherwise knowingly and willfully misrepresents herself or himself, through conduct or verbal or written notice, as having a disability or disability-related need and being qualified to use an emotional support animal commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and must perform 30 hours of community service for an organization that serves persons with disabilities or for another entity or organization at the discretion of the court,

to be completed within 6 months after conviction.

(5)(a) A person with a disability or disability-related need is liable for any damage done to the premises or to another person on the premises by her or his emotional support animal.

(b) A landlord is not liable for any damage done to the premises or to any person on the premises by an emotional support animal that is authorized as a reasonable accommodation for a person with a disability or disability-related need under this section, the federal Fair Housing Act, s. 504 of the Rehabilitation Act of 1973, or any other federal, state, or local law.

(6) This section does not apply to a service animal as defined in s. 413.08.

Section 2. Paragraph (b) of subsection (6) of section 413.08, Florida Statutes, is amended to read:

413.08 Rights and responsibilities of an individual with a disability; use of a service animal; prohibited discrimination in public employment, public accommodations, and housing accommodations; penalties.—

(6) An individual with a disability is entitled to rent, lease, or purchase, as other members of the general public, any housing accommodations offered for rent, lease, or other compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(b) An individual with a disability who has a service animal or who obtains a service animal is entitled to full and equal access to all housing accommodations provided for in this section, and such individual ~~a person~~ may not be required to pay

extra compensation for such animal. However, such individual ~~a person~~ is liable for any damage done to the premises or to another individual ~~person~~ on the premises by the animal. A housing accommodation may request proof of compliance with vaccination requirements. This paragraph does not apply to an emotional support animal as defined in s. 760.27.

Section 3. Paragraph (e) of subsection (1) of section 419.001, Florida Statutes, is amended to read:

419.001 Site selection of community residential homes.—

(1) For the purposes of this section, the term:

(e) "Resident" means any of the following: a frail elder as defined in s. 429.65; a person who has a disability ~~handicap~~ as defined in s. 760.22(3)(a) ~~s. 760.22(7)(a)~~; a person who has a developmental disability as defined in s. 393.063; a nondangerous person who has a mental illness as defined in s. 394.455; or a child who is found to be dependent as defined in s. 39.01 or s. 984.03, or a child in need of services as defined in s. 984.03 or s. 985.03.

Section 4. Present subsections (3) through (6) of section 760.22, Florida Statutes, are redesignated as subsections (4) through (7), respectively, and present subsection (7) of that section is amended, to read:

760.22 Definitions.—As used in ss. 760.20-760.37, the term:

(3)~~(7)~~ "Disability" ~~"Handicap"~~ means:

(a) A person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; or

(b) A person has a developmental disability as defined in

s. 393.063.

Section 5. Section 760.23, Florida Statutes, is amended to read:

760.23 Discrimination in the sale or rental of housing and other prohibited practices.—

(1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

(2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

(3) It is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, sex, disability ~~handicap~~, familial status, or religion or an intention to make any such preference, limitation, or discrimination.

(4) It is unlawful to represent to any person because of race, color, national origin, sex, disability ~~handicap~~, familial status, or religion that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(5) It is unlawful, for profit, to induce or attempt to induce any person to sell or rent any dwelling by a

representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

(6) The protections afforded under ss. 760.20-760.37 against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(7) It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability ~~handicap~~ of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person associated with the buyer or renter.

(8) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability ~~handicap~~ of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person associated with the buyer or renter.

(9) For purposes of subsections (7) and (8), discrimination includes:

(a) A refusal to permit, at the expense of the ~~handicapped~~ person with a disability, reasonable modifications of existing

premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; or

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

(10) Covered multifamily dwellings as defined herein which are intended for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site as determined by commission rule. Such buildings shall also be designed and constructed in such a manner that:

(a) The public use and common use portions of such dwellings are readily accessible to and usable by ~~handicapped~~ persons with disabilities.

(b) All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by a person in a wheelchair.

(c) All premises within such dwellings contain the following features of adaptive design:

1. An accessible route into and through the dwelling.

2. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

3. Reinforcements in bathroom walls to allow later installation of grab bars.

4. Usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.

(d) Compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for persons with a physical disability ~~physically handicapped people~~, commonly cited as ANSI A117.1-1986, suffices to satisfy the requirements of paragraph (c).

State agencies with building construction regulation responsibility or local governments, as appropriate, shall review the plans and specifications for the construction of covered multifamily dwellings to determine consistency with the requirements of this subsection.

Section 6. Section 760.24, Florida Statutes, is amended to read:

760.24 Discrimination in the provision of brokerage services.—It is unlawful to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation, on account of race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

Section 7. Subsection (1) and paragraph (a) of subsection (2) of section 760.25, Florida Statutes, are amended to read:

760.25 Discrimination in the financing of housing or in residential real estate transactions.—

(1) It is unlawful for any bank, building and loan association, insurance company, or other corporation,

association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the race, color, national origin, sex, disability ~~handicap~~, familial status, or religion of such person or of any person associated with him or her in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or because of the race, color, national origin, sex, disability ~~handicap~~, familial status, or religion of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(2)(a) It is unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

Section 8. Paragraph (a) of subsection (1) and paragraph (a) of subsection (5) of section 760.29, Florida Statutes, are amended to read:

760.29 Exemptions.—

(1)(a) Nothing in ss. 760.23, ~~and~~ 760.25, and 760.27 applies to:

1. Any single-family house sold or rented by its owner, provided such private individual owner does not own more than three single-family houses at any one time. In the case of the sale of a single-family house by a private individual owner who does not reside in such house at the time of the sale or who was not the most recent resident of the house prior to the sale, the exemption granted by this paragraph applies only with respect to one sale within any 24-month period. In addition, the bona fide private individual owner shall not own any interest in, nor shall there be owned or reserved on his or her behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than three single-family houses at any one time. The sale or rental of any single-family house shall be excepted from the application of ss. 760.20-760.37 only if the house is sold or rented:

a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate licensee or such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such licensee or person; and

b. Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of s. 760.23(3).

Nothing in this provision prohibits the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as is necessary to perfect or transfer the title.

2. Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

(5) Nothing in ss. 760.20-760.37:

(a) Prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

Section 9. Subsection (5) of section 760.31, Florida Statutes, is amended to read:

760.31 Powers and duties of commission.—The commission shall:

(5) Adopt rules necessary to implement ss. 760.20-760.37 and govern the proceedings of the commission in accordance with chapter 120. Commission rules shall clarify terms used with regard to ~~handicapped~~ accessibility for persons with disabilities, exceptions from accessibility requirements based on terrain or site characteristics, and requirements related to housing for older persons. Commission rules shall specify the fee and the forms and procedures to be used for the registration required by s. 760.29(4)(e).

Section 10. This act shall take effect July 1, 2020.

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 Innovation, Industry, and Technology

BILL:	SB 912
INTRODUCER:	Senator Diaz
SUBJECT:	Department of Business and Professional Regulation
DATE:	January 31, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	IT	**Favorable**
2.			CA	
3.			AP	

I. Summary:

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

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

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

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

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

Related to regulation of pugilistic events, the bill:

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

Related to alcohol beverage regulations, the bill:

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

which the applicant is seeking to license, and maintain a current electronic mail address with the DBPR;
- Requires licensees to submit reports on alcohol sales through the DBPR's electronic system; and
- Requires notices related to a vendor's delinquent payment to a distributor be provided by the DBPR through electronic mail; and
- Revises the compliance audit timeframes for special restaurant licensees.

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

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

II. Present Situation:

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

Organization of the Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has 12 divisions:
- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Pari-mutuel Wagering;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

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

Powers and Duties of the DBPR

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

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

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

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

Division of Florida Condominiums, Timeshares, and Mobile Homes

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

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

[1] Section 548.003(1), F.S.
[2] *See* Parts I and III of ch. 450, F.S.
[3] *See* s. 455.01(6), F.S.
[4] *See* s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by staff counsel of the DBPR. *See* s. 455.221(1), F.S.
[5] Section 455.201(2), F.S.
[6] *Id.*
[7] Section 455.201(4)(b), F.S.
[8] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/, (last visited Jan. 8, 2020).
[9] *Id*.

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

Division of Hotels and Restaurants

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

Division of Alcoholic Beverages and Tobacco

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

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

III. Effect of Proposed Changes:

Tobacco Products Regulation and Taxation

Present Situation

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

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

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

[10] Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, http://www.myfloridalicense.com/DBPR/hotels-restaurants/ (last visited Jan. 8, 2020).
[11] Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/ (last visited Jan. 8, 2020).
[12] Section 561.02, F.S.

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

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

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

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

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

Effect of Proposed Changes

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

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[13] Sections 210.01(1) and 210.25(12), F.S. "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product. "Nicotine products" do not include tobacco products, certain smoking cessation products, and products with incidental nicotine. Section 877.112(1)(a) and (b), F.S.
[14] Section 569.003, F.S.
[15] Sections 210.01(21) and 210.15, F.S.
[16] Sections 210.01(6) and 210.15(1), F.S.
[17] Sections 210.01(14) and 210.15(1), F.S.
[18] Sections 210.01(20) and 210.15(1), F.S.
[19] Sections 210.01(17) and 210.15(1), F.S.
[20] Section 210.65(2), F.S.
[21] Sections 210.25(5) and 210.40, F.S.
[22] Section 210.09(2), F.S. Some tax forms are electronically filed with the DABT, and some require manual transmission. Department of Business and Professional Regulation, *Alcoholic Beverages and Tobacco- Forms & Publications, Licensing Related Forms, Tax-Related Forms*, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/forms-and-publications/#1516309637983-6566a2a4-a2f1 (last visited Jan. 10, 2020).
[23] Sections 210.55(1), F.S.

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

Division of Hotels and Restaurants

Present Situation

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

The term "public lodging establishment" includes:[25]

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

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

Each public lodging establishment and public food service establishment must obtain a license from the DH&R. Licenses are renewed annually, and the DH&R must adopt a rule establishing a staggered schedule for license renewals.[27] For public lodging establishments, the DH&R must adopt, by rule, a schedule of fees to be paid based on the number of rental units in the public lodging establishment, and based on seating capacity and services offered for public food service establishments. Such fees may not exceed $1,000.[28]

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

[24] Section 509.032, F.S.
[25] Section 509.013(4), F.S.
[26] Section 509.013(5), F.S.
[27] Section 509.241(1), F.S.
[28] Section 509.251(1) and (2), F.S.
[29] *See* Fla. Admin. Code R. 61C-1.008 and Department of Business and Professional Regulation, *Hotel and Restaurants – Hotel-Motel Guide*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/ (last visited Jan. 11, 2020); Department of Business and Professional Regulation, *Hotel and Restaurants – Food*

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

Effect of Proposed Changes

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

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

State Boxing Commission

Present Situation:

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing,[31] and mixed martial arts[32] by the Florida State Boxing Commission (commission), which is assigned to the DBPR for administrative and fiscal purposes.[33]

The commission has exclusive jurisdiction over every boxing, kickboxing, and mixed martial arts match held in Florida[34] which involves a professional.[35] Professional matches held in Florida must meet the requirements set forth in ch. 548, F.S., and the rules adopted by the commission.[36] Chapter 548, F.S. does not apply to certain professional or amateur "martial arts," such as karate, aikido, judo, and kung fu; the term "martial arts" is distinct from and does not include "mixed martial arts."[37]

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

Service Fees, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/ (last visited Jan. 11, 2020).

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

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

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

[33] *See* s. 548.003(1), F.S.

[34] *See* s. 548.006(1), F.S.

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

[36] *See* s. 548.006(4), F.S.

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

[38] *See* s. 548.006(3), F.S.

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

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

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

Effect of Proposed Changes

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

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

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

Division of Alcoholic Beverages and Tobacco

Present Situation

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

[39] Section 548.002(2), F.S.
[40] *See* DBPR, *Florida State Boxing Commission Annual Report, Fiscal Year 2018-2019*, at p. 2, available at: http://www.myfloridalicense.com/dbpr/os/documents/Boxing18_19.pdf (last visited Jan. 24, 2020).
[41] The term "participant" means a professional competing in a boxing, kickboxing, or mixed martial arts match. *See* s. 548.002, F.S., for the definitions of "participant," "manager," "second," "judge," "physician," "matchmaker," and "promoter." The terms "trainer," "timekeeper," "referee," and "announcer" are not defined in ch. 548, F.S.
[42] Section 548.043(3), F.S.
[43] Section 561.02, F.S.

License Application Process

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

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

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

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

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

Recordkeeping and Reporting Requirements

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

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

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

[44] Section 561.17(1), F.S.
[45] *Id*.
[46] *Id*.
[47] Section 561.01(11), F.S., defining the term "licensed premises, and s. 565.03(2)(c), F.S., dealing with craft distilleries.
[48] Section 561.55(1), F.S.

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

Credit for the Sale of Liquor

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

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

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

Permit Carriers

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

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

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

[49] Section 561.55(2), F.S.
[50] Section 561.42(3), F.S.
[51] Section 561.42(4), F.S.
[52] *Id*.
[53] Section 561.57(2), F.S.
[54] Section 561.01(20), F.S.

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

Special Restaurant Licenses

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

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

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

Effect of Proposed Changes

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

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

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

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

[55] Chapter 2015-52, Laws of Fla.
[56] Section 561.20(2)(a)4., F.S.
[57] Section 561.20(2)(a)4., F.S.

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

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

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

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

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

Condominiums

Present Situation

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

Division of Florida Condominiums, Timeshares, and Mobile Homes

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

[58] Section 718.103(11), F.S.
[59] Section 718.104(2), F.S.
[60] Sections 718.501(1) and 719.501(1), F.S.

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

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

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

Annual Budget

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

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

Board of Directors – Eligibility based on Payment of Monetary Obligations

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

[61] *Id.*
[62] Section 718.501(1), F.S.
[63] Section 719.501(1), F.S.
[64] Sections 718.501(1) and 719.501(1), F.S.
[65] *Id.*
[66] Section 718.112(2)(f), F.S.
[67] Section 718.112(2)(e)1., F.S.
[68] Sections 718.112(2)(f) and 718.504(21), F.S.

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

To become a board member, a person may be:
- Elected to the board by the members of the association;[70] or
- Appointed to the board by the developer if the developer is still entitled to representation; or by the board of directors if a vacancy on the board occurs between meetings.[71]

A condominium association's bylaws establish the eligibility requirements to serve on the association's board of directors.[72] However, current law also establishes minimum qualification to serve on an association's board of directors.[73] To serve as a director, a person may not:[74]
- Be a co-owner of a unit with another director unless they own more than one unit or the condominium association is made up of less than ten units;
- Be delinquent in the payment of any monetary obligation to the condominium association;
- Have been previously suspended or removed from a condominium association's board of directors or by the FCTMH; or
- Have been convicted of a felony, under certain circumstances.[75]

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

Condominium Ombudsman

Present Situation

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

[69] Sections 718.103(4), 718.111, and 718.112, F.S.
[70] Section 718.112(2)(d)4., F.S.
[71] Sections 617.0809 and 718.112(2)(d)9., F.S.
[72] Section 718.112(2)(a), F.S.
[73] Section 718.112(2)(d), F.S.
[74] Sections 718.112(2)(d), F.S.
[75] Section 718.111(1)(d), F.S.
[76] *See* Department of Business and Professional Regulation, *SB 912 Bill Analysis*, p. 5 (Dec. 9, 2019) (on file with Senate Committee on Innovation, Industry, and Technology).
[77] *Id.*
[78] Sections 718.5011 and 718.5012, F.S.

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

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

Effect of Proposed Changes

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

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

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

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

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[79] *Id.*
[80] Section 718.5014, F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

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

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

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

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

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

VIII. Statutes Affected:

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

IX. Additional Information:

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

None.

B. Amendments:

None.

283054

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/10/2020	.	
	.	
	.	
	.	

The Committee on Innovation, Industry, and Technology (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 1035 and 1036
insert:
Section 15. Section 564.05, Florida Statutes, is repealed.
Section 16. Section 564.055, Florida Statutes, is repealed.

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 49

283054

and insert:

condominium ombudsman; repealing ss. 564.05 and 564.055, F.S., relating to limitations on the size of individual wine containers and cider containers, respectively; amending ss. 455.219, 548.002,

974940

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/10/2020	.	
	.	
	.	
	.	

The Committee on Innovation, Industry, and Technology (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 1035 and 1036
insert:

Section 15. Paragraph (c) of subsection (2) of section 565.03, Florida Statutes, is amended to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; distilleries and craft distilleries.—

(2)

(c) A craft distillery licensed under this section which is not licensed as a vendor under s. 561.221 may sell to consumers under its craft distillery license, at its souvenir gift shop, up to 75,000 gallons per calendar year of branded products ~~distilled on its premises in this state~~ in factory-sealed containers that are filled at the distillery for off-premises consumption by consumers. Such sales are authorized only on ~~private~~ property owned or leased by the craft distillery which is contiguous to the craft distillery's licensed ~~distillery~~ premises approved by the division ~~in this state and included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery shall require the division's approval verifying that the souvenir gift shop location operated by the licensed distillery is owned or leased by the distillery and on property contiguous to the distillery's production building in this state~~.

1. A craft distillery may not sell under its craft distillery license any factory-sealed individual containers of spirits to consumers in this state except in face-to-face sales transactions with such consumers at the craft distillery's licensed premises or on property owned or leased by the craft distillery which is contiguous to the craft distillery's licensed premises. Such containers must be in compliance with the container limits in s. 565.10 ~~who are making a purchase of no more than six individual containers of each branded product~~.

~~2. Each container sold in face-to-face transactions with consumers must comply with the container limits in s. 565.10, per calendar year for the consumer's personal use and not for~~

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~~resale and who are present at the distillery's licensed premises in this state.~~

2.~~3.~~ A craft distillery must report to the division within 5 days after it reaches the production limitations provided in paragraph (1)(b). Any retail sales to consumers at the craft distillery's licensed premises are prohibited beginning the day after it reaches the production limitation.

3.a.~~4.~~ A craft distillery may ~~not~~ ship or arrange to ship any of its distilled spirits from a single retail location contiguous to the craft distillery's licensed premises to consumers in this state ~~and may sell and deliver only to consumers within the state in a face-to-face transaction at the distillery property. However,~~

b. A craft distiller licensed under this section may ship, arrange to ship, or deliver such spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.

4.~~5.~~ Except as provided in subparagraph 6., it is unlawful to transfer a distillery license for a distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or any ownership interest in such license to an individual or entity that has a direct or indirect ownership interest in any distillery licensed in this state; another state, territory, or country; or by the United States government to manufacture, blend, or rectify distilled spirits for beverage purposes.

5.~~6.~~ A craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled

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spirits on each of its premises in this state or in another state, territory, or country.

Section 16. Subsection (4) is added to section 561.221, Florida Statutes, to read:

561.221 Licensing of manufacturers and distributors as vendors and of vendors as manufacturers; conditions and limitations.—

(4)(a) Notwithstanding s. 561.22, s. 561.42, or any other provision of the Beverage Law, the division may issue vendor's licenses for the sale of alcoholic beverages on a distillery's licensed premises to a distillery licensed under s. 565.03, even if such distillery is also licensed as a distributor.

(b) If the vendor's license is for the sale of alcoholic beverages on a distillery's licensed premises, the licensed vendor premises must be included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery must be approved by the division and must verify that the vendor premises operated by the licensed distillery is owned or leased by the distillery and is located on the licensed distillery premises.

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

And the title is amended as follows:

Delete line 49

and insert:

condominium ombudsman; amending s. 565.03, F.S.; revising the requirements for the sale of branded products by a licensed craft distillery to consumers;

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deleting a provision that prohibits a craft distillery from selling more than six individual containers of a branded product to a consumer; revising requirements relating to the shipping of distilled spirits to consumers by a craft distillery; amending s. 561.221, F.S.; amending s. 561.221, F.S.; authorizing the division to issue vendor’s licenses to certain distilleries for the sale of alcoholic beverages on the distillery’s licensed premises; requiring that the licensed vendor premises be included on certain sketches and diagrams under certain circumstances; requiring that all revisions to sketches or diagrams be approved by the division; amending ss. 455.219, 548.002,

261994

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/10/2020	.	
	.	
	.	
	.	

The Committee on Innovation, Industry, and Technology (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 1035 and 1036
insert:

Section 15. Paragraph (b) of subsection (1) of section 565.03, Florida Statutes, is amended to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; distilleries and craft distilleries.—

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

261994

(b) "Craft distillery" means a licensed distillery that produces 250,000 ~~75,000~~ or fewer gallons per calendar year of distilled spirits on its premises and has notified the division in writing of its decision to qualify as a craft distillery.

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

And the title is amended as follows:

Delete line 49

and insert:

condominium ombudsman; amending s. 565.03, F.S.; revising the definition of the term "craft distillery"; amending ss. 455.219, 548.002,

The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry, and Technology

Subject: Committee Agenda Request

Date: January 13, 2020

I respectfully request that **Senate Bill # 912**, relating to Department of Business and Professional Regulation, be placed on the:

☐ Committee agenda at your earliest possible convenience.

☒ Next committee agenda.

Senator Manny Diaz, Jr.
Florida Senate, District 36

File signed original with committee office

2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION	
BILL NUMBER:	SB 912
BILL TITLE:	Department of Business and Professional Regulation
BILL SPONSOR:	Sen. Diaz
EFFECTIVE DATE:	7/01/2020

COMMITTEES OF REFERENCE
1) N/A
2) Click or tap here to enter text.
3) Click or tap here to enter text.
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE
N/A

SIMILAR BILLS	
BILL NUMBER:	HB 623 (compare); and SB 1154 (compare)
SPONSOR:	Rep. Shoaf; and Sen. Baxley

PREVIOUS LEGISLATION	
BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

IDENTICAL BILLS	
BILL NUMBER:	HB 689
SPONSOR:	Rep. Rodriguez (Ant)

Is this bill part of an agency package?
Yes

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	December 9, 2019
LEAD AGENCY ANALYST:	Sterling Whisenhunt, Director Alcoholic Beverages and Tobacco
ADDITIONAL ANALYST(S):	Patrick Cunningham – Executive Director, Florida State Boxing Commission Debi Winters, Alcoholic Beverages and Tobacco Michelle Keith, Division of Hotels & Restaurants

	Chris Carson, Division of Hotels & Restaurants Marc Drexler, OGC- Division of Hotels & Restaurants Julie Scarbrough- Chief, Bureau of Compliance, CTMH Tom Coker, Technology Thomas Izzo, OGC Rules Jeff Kelly, Division of Professions Tracy Dixon, Service Operations
LEGAL ANALYST:	Ross Marshman
FISCAL ANALYST:	Raleigh Close, Planning and Budget

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Alcoholic Beverages and Tobacco: The proposal requires Alcoholic Beverage and Tobacco licensees to submit and maintain electronic mailing addresses. It requires vendors replying to the initial notice of delinquency to respond via electronic mail and requires all monthly tax returns submitted for cigarettes, other tobacco products, and alcoholic beverage products to be submitted to the division through the division's electronic data interchange system, currently referred to as EDS. It authorizes the division to require alcoholic beverage applicants to submit fingerprints electronically or on forms prescribed by FDLE. The bill requires all applications for any alcoholic beverage license to be accompanied by proof of the applicant's right of occupancy for the entire premises sought to be licensed.

The proposal extends the initial timeframe or operating period during which a special food service establishment must derive at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages and establishes subsequent audit frequencies based on the license holder’s performance in the immediately preceding compliance audit.

Florida State Boxing Commission: The bill changes the name of the Florida State Boxing Commission to the Florida Athletic Commission.

The bill amends statute to give the Commission discretion and flexibility to set the need for and size of gloves in each match.

Division of Hotels and Restaurants: The bill removes language from s. 509.241(1), F.S., requiring a staggered schedule of license renewals and removes language from s. 509.251, F.S., requiring full or half year licenses depending on the date applied and the time until next renewal. This will simplify the division’s licensing processes by allowing the division to set the expiration and renewal date for all new licenses to one full year from the issue date. By effect, applicants will save money and avoid being charged for more license time than available based on their license issuance date.

Division of Florida Condominiums, Timeshares and Mobile Homes:

The bill amends eligibility requirements for a board member regarding the payment of assessments and defines a delinquency for payment of assessments regarding eligibility. The bill also defines parameters for proposing and adopting an annual budget.

The proposal provides statutory authority to the division to adopt rules on the complaint process and the required form for submitting complaints.

The bill amends the office location of the Condominium Ombudsman.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Alcoholic Beverages and Tobacco: Section 210.09(2), F.S., authorizes the Division of Alcoholic Beverages and Tobacco to prescribe and promulgate by rules and regulations, the records to be kept, and reports to be made to the division by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state as may be

necessary to collect and properly distribute the taxes imposed by s. 210.02, F.S. All reports must be made on or before the 10th day of the month following the month for which the report is made, unless the division by rule or regulation prescribes that reports be made more often.

Section 210.55(1), F.S., requires distributors of other tobacco products, on or before the 10th of each month, to file a return with the ABT showing the taxable price of each tobacco product brought or caused to be brought into this state for sale, or made, manufactured, or fabricated in this state for sale in this state, during the preceding month. Every taxpayer outside this state must file a return showing the quantity and taxable price of each tobacco product shipped or transported to retailers in this state, to be sold by those retailers, during the preceding month. Returns must be made upon forms furnished and prescribed by the division and contain any other information that the division requires. In addition, each return must be accompanied by a remittance for the full tax liability shown.

Section 561.01, F.S., defines permit carrier to mean a licensee authorized to make alcoholic beverage deliveries as provided in s. 561.57, F.S.

Section 561.17, F.S., relating to license and registration applications, requires any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, to file, with the district licensing personnel of the division in which the place of business for which a license is sought is located, a sworn application in the format prescribed by the division. This section outlines various requirements for the applications, including but not limited to:

- The mailing address for the business being licensed, but it does not currently require an electronic mailing address;
- A set of fingerprints on regular United States Department of Justice forms for the applicant and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought; and
- A certificate of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.
- Section 561.20(2)(a)4, F.S., authorizes the issuance of an alcoholic beverage specialty license to a food service establishment that has 2,500 square feet of service area, is equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 60-day operating period and each 12-month operating period thereafter.

Section 561.55(2), F.S., requires each alcoholic beverage manufacturer, distributor, broker, sales agent, and importer to make a full and complete report by the 10th day of each month for the previous calendar month. The report must be made out in triplicate; two copies shall be sent to the division, and the third copy shall be retained for the manufacturer's, distributor's, broker's, sales agent's, or importer's record. Reports must be made on forms prepared and furnished by the division.

Section 561.42, F.S., relating to Tied House Evil prohibitions, authorizes credit for the sale of liquors to be extended to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made. This section outlines the procedures that must be followed when the credit extended to a vendor is not repaid by the 10th day. After notification by the distributor that the vendor has not repaid the credit, but before the division prohibits any future sales to the delinquent vendor, this section requires the division, within two days after receipt of the non-payment notice by the distributor, to give written notice to the vendor by mail of the receipt by the division of the notification of delinquency and the vendor must be directed to make payment or, upon failure to do so, to show cause before the division why further sales to such vendor should not be prohibited.

Florida State Boxing Commission: The current name is the Florida State Boxing Commission. Additionally, the minimum size of gloves is presently fixed in statute.

Division of Hotels and Restaurants: Section 509.241(1), F.S., requires each public lodging and public food service establishment under the division's authority to obtain a license and requires the division to adopt rules establishing a staggered schedule for license renewals. Under s. 509.241(1), F.S., the division adopted a rule establishing a staggered schedule for license renewals. This divided the state of Florida into seven geographic districts with five different renewal dates for Food and Lodging licenses (two districts share a renewal date).

Section 509.251, F.S., sets directives on the division's license fee schedule such as additional fees due, late fees and a maximum license fee limit. Under s. 509.251, F.S., the division adopted a fee schedule for licensees. The fee required for a new license depends on the date applied and the time until next renewal. This is defined and prorated in statute to either a full year fee, half year fee, or in some cases, both a full and half year fee.

The result is a complex licensing structure and inequitable costs for licensure. Businesses opening on the same day in different parts of the state will pay different fees and their licenses will expire at different times. As a result, license fees are unnecessarily complex and new licensees are frequently charged for more license time than they receive.

Division of Florida Condominiums, Timeshares and Mobile Homes: Currently, unit owner fines implemented by the association are considered part of the monetary obligation due to the association. A person who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot.

Chapter 718, F.S., does not currently define "delinquency" as it relates to unit owners' payment of assessments to the association and there is currently no timeline for proposing and adopting a budget other than annually.

Chapter 718, F.S., does not currently define a method for accepting complaints.

Currently the Office of the Condominium Ombudsman is required to be located in Leon County or at a location convenient to the offices of the division, if no suitable space is available

2. EFFECT OF THE BILL:

Alcoholic Beverages and Tobacco:

The proposed legislation creates s. 561.17(5), F.S., requiring:

- Any person or entity licensed or permitted by the Division of Alcoholic Beverages and Tobacco to provide an electronic mailing address to the division to function as the primary contact for all communication by the division to the licensee or permittees; and
- Licensees and permittees to be responsible for maintaining accurate contact information on file with the division.

Further, the proposed legislation amends s. 561.42(4), F.S., to require the Division to provide notice required by the section via electronic mail, and creates an option for vendors to request a hearing pursuant to this section via electronic mail.

Operational Impact – The Bureaus of Licensing and Enforcement may be tasked with bringing licensees and permittees into compliance with the requirement for providing and maintaining accurate contact information. Anticipated benefits include ease of communication with licensees and permittees and less cost for postage.

The proposal requires all monthly tax returns submitted for cigarettes, other tobacco products, and alcoholic beverage products to be submitted to the division through the division's electronic data interchange system, currently referred to as EDS. In addition, the proposal deletes current language requiring alcoholic beverage tax returns to be completed in triplicate.

Operational Impact – The proposed language mandating the electronic reporting of monthly tax returns will prevent unnecessary mathematical errors and other reporting errors, and will also reduce or remove opportunities for underreporting taxes due or claiming excess refunds from the division, ensuring the proper and timely collection of revenue due to the state. Further, the proposed changes will simplify the process for obtaining evidence required to open and/or support late tax reporting and payments.

The proposal authorizes the division to require alcoholic beverage applicants to submit fingerprints electronically through an approved electronic fingerprinting vendor or on forms prescribed by the Florida Department of Law Enforcement prior to approval of the application. In addition, all applications for any alcoholic beverage license are required to be accompanied by proof of the applicant's right of occupancy for the entire premises sought to be licensed.

Operational Impact – This clarifies and streamlines procedure for performing background checks through the use of fingerprints by allowing the division to use FDLE approved forms rather than federally approved forms that may be inconsistent with Florida practices, and by allowing for the use of electronic fingerprinting vendors rather than requiring everyone use paper and ink based fingerprinting cards.

Further, by mandating that proof of occupancy is required with all license application, rather than simply relying on implication in statute that such documentation is required, the statutory requirements for application are clarified and questions or concerns centering around whether a particular entity is authorized to sell or serve alcoholic beverages or tobacco products at a location sought to be licensed can be more easily answered at the application stage pursuant to the proposed language.

The proposal deletes s. 561.01(20), F.S., which defines permit carrier to be a licensee authorized to mail deliveries as provided in s. 561.57, F.S. The removal of an unnecessary definition cleans up the Beverage Law's text.

The proposal expands the audit timeframes that a food service establishment must derive at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages, as follows:

- A first audit conducted following the first 120-day operating period, as opposed to the current 60-day operating period; and
- A second audit performed on the following 12-month operating period.

Instead of audits performed on each 12 month operating periods thereafter, subsequent audit timeframes will be based upon the audit percentage established by the most recent audit and conducted on a staggered scale as follows:

- Level 1, 51 to 60 percent, every year;
- Level 2, 61 to 75 percent, every 2 years;
- Level 3, 76 to 90 percent, every 3 years; and
- Level 4, 91 to 100 percent, every 4 years.

Operational Impact - The auditing schedule allows the division to better focus the Bureau of Auditing's resources towards licensees that are more likely to violate the revenue percentage requirement, and to remove unnecessary regulatory burdens on those entities that are unlikely to be in violation of the statutory requirements.

Florida State Boxing Commission:

The name change to the Florida Athletic Commission recognizes that the commission sanctions more than just boxing matches. The new name is inclusive of all forms of combat sports regulated by the Commission and aligns with the official name established for comparable regulatory bodies of 34 other states.

The bill gives the commission rulemaking authority to establish glove requirements and glove weight specifications. The authority to set these requirements by rule affords the commission flexibility in an ever-evolving market for these sports to adapt glove sizes while still maintaining the highest safety standards.

The bill also amends s. 455.219, F.S., to make conforming changes by changing the reference to the Florida Boxing Commission to the Florida Athletic Commission.

Division of Hotels and Restaurants: The bill will set each new division license to expire and renew one year after the open date. This would only apply to new license applications processed after implementation of this initiative. The bill is not retroactive, thus, existing licenses will retain their current renewal dates. The benefits of this are two-fold: first, it simplifies the division's licensing structure, thereby reducing escalations, refunds, deficiencies, customer contact, and labor hours. Second, simplifying the fee structure benefits the division's licensees by reducing the costs of the license over twelve months and decreasing the number of application delays (incorrect fees are one of the common issues that prevent approval of applications), thereby helping to ensure Florida businesses open on schedule with lower fees paid during the critical first year of operation.

Division of Florida Condominiums, Timeshares and Mobile Homes:

The bill removes "monetary obligation" from consideration of eligibility to run for election to the board of directors in a condominium association and replaces it with "assessment." This change would remove the ability of a controlling board of directors to issue fines to unit owners in an effort to limit the pool of eligible candidates who can compete in an election.

Defining the term "delinquency" would assist investigation of cases where a unit owner alleges that they were improperly left off the election ballot or improperly prohibited from running for the board due to a delinquent payment(s) to the association.

Currently, s. 718.112 F.S., requires the association to propose the annual budget but does not define the timing to adopt an operating budget. The bill provides a requirement to propose and adopt a budget by a date certain which allows the association to review expenses and provide guidance and transparency to unit owners. This may also assist with reducing the need to issue special assessments as the association is better equipped to address the need for increased assessments for anticipated expenses.

The bill provides authority to the division to adopt rules regarding the submission of complaints. Adopting rules regarding the complaint form and process would allow the division to utilize an efficient method of accepting complaints along with an online method.

The bill amends the office location requirement of the Condominium Ombudsman. Currently, it is to be located in Leon County and this change allows the location of the ombudsman to be located in south Florida as this area has the highest concentration of condominium unit owners with issues regarding their associations.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☒ N☐

If yes, explain:	**Division of Hotels and Restaurants:** Section 3 of the bill allows the division to adopt rules establishing procedures for license issuance and renewals. **Division of Condominiums, Timeshares and Mobile Homes:** Allows rule development for accepting complaints.
Is the change consistent with the agency's core mission?	Y☒ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	**Division of Hotels and Restaurants:** Rule 61C-1.008, F.A.C. **Division of Condominiums, Timeshares and Mobile Homes:** Rules 61B-20.004, F.A.C. and 61B-21.001, F.A.C.

***4.* WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	**Division of Alcoholic Beverages and Tobacco:** To date, the division has not been contacted by proponents of the legislation with any stated positions. **Division of Hotels and Restaurants:** To date, the division has not been contacted by proponents of the legislation with any stated positions. **Division of Condominiums, Timeshares and Mobile Homes:** To date, the division has not been contacted by proponents of the legislation with any stated positions. **Florida State Boxing Commission:** To date, the division has not been contacted by proponents of the legislation with any stated positions.
Opponents and summary of position:	**Division of Alcoholic Beverages and Tobacco:** To date, the division has not been contacted by opponents of the legislation with any stated positions. **Division of Hotels and Restaurants:** To date, the division has not been contacted by opponents of the legislation with any stated positions. **Division of Condominiums, Timeshares and Mobile Homes:** To date, the division has not been contacted by opponents of the legislation with any stated positions. **Florida State Boxing Commission:** To date, the division has not been contacted by opponents of the legislation with any stated positions.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☒

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☒

Revenues:	None anticipated.
Expenditures:	None anticipated.
Does the legislation increase local taxes or fees? If yes, explain.	No
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?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☒ N☐

Revenues:	**Division of Alcoholic Beverages and Tobacco:** Tax revenue may be maximized by the required electronic submission of tax reports. **Division of Hotels and Restaurants:** Based on internal projections for FY 20-21, the bill would reduce the division's revenue by approximately 3.9%.
Expenditures:	**Division of Alcoholic Beverages and Tobacco:** None anticipated.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☐ N☐

Revenues:	**Division of Alcoholic Beverages and Tobacco:** None anticipated.

Expenditures:	**Division of Alcoholic Beverages and Tobacco:** None anticipated. **Division of Hotels and Restaurants:** The bill will generally reduce license fees paid by food and lodging licensees during their first 12 months of licensure. The division estimates licensees will save about $1.4 million in FY 2020-21.
Other:	**Division of Alcoholic Beverages and Tobacco:** N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☐

If yes, explain impact.	**Division of Alcoholic Beverages and Tobacco:** No **Division of Hotels and Restaurants:** The bill will generally reduce license fees paid by food and lodging licensees during their first 12 months of licensure. The division estimates licensees will save about $1.4 million in FY2020-21. The decrease comes from eliminating the staggered schedule and outdated prorating system which in turn provides new licensees with a full year of licensure.
Bill Section Number:	**Division of Alcoholic Beverages and Tobacco:** N/A

TECHNOLOGY IMPACT

1. DOES THE BILL 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.	**Division of Alcoholic Beverages and Tobacco:** If the division requires additional allegation/violation codes to enforce the email requirement, modifications will need to be made to Versa: Regulation. Additionally, the Electronic Data Submission (EDS) system may need to be modified to implement changes to the audit frequency requirements and create SFS audit reports. Changes to Versa: Regulation (VR) – 4 hours Changes to EDS – 70 hours These modifications can be made with existing resources. **Florida State Boxing Commission:** In order to modify technology resources to recognize the change of name to the Florida Athletic Commission, the department will require a minimum effort to: • Modify portal – 20 hours • Modify Versa: Regulation configuration – 16 hours • Modify Versa: Regulation correspondence – 5 hours • Modify license print – 16 hours • Record and implement new IVR voice files – 20 hours • Modify OnBase current routing queues – 8 hours • Modify GovQA public record tracking – 2 hours • Modify E-mail distribution lists – 4 hours • Modify RemedyForce application – 4 hours • Modify Business Objects folders – 16 hours • Modify Intranet and Internet site – 10 hours • Modify letterhead templates – 8 hours These modifications can be made with existing resources. **Division of Condominiums, Timeshares and Mobile Homes:** Assuming the division adopts a rule requiring creation of a customized online complaint form, modifications to Versa: Online, Versa: Regulation and OnBase document management system routing will be required. Changes to Versa: Online (VO) – 80 hours Changes to Versa: Regulation (VR) – 40 hours Changes to OnBase – 16 hours These modifications can be made with existing resources. **Division of Hotels and Restaurants:** Transition from the current staggered license renewal schedule to a straight annual renewal for new licensees will require modification of Versa: Regulation configuration for thirteen (13) license types and 38 transactions.

	Currently, the division's schedule requires opening of renewal transactions and creation of renewal notifications five times per year, approximately 60 days before the renewal date, with application of late fees according to the same schedule at the time of delinquency. The Division of Hotels and Restaurants will need to clarify the frequency of these activities for the annual renewal schedule. If renewal transactions will need to be opened monthly, this will increase transaction and notification from five times per year to twelve times per year. If the division wants to run renewals daily as indicated in the Additional Comments, further coordination with the Department of Revenue will be necessary. If the division wants to apply late fees more frequently, it may be necessary to create a batch job that automatically applies late fees. These issues will not be impactful until the following annual renewal cycle starting in July 2021. Changes to Versa: Regulation – 300 hours These modifications can be made with existing resources.

FEDERAL IMPACT

1. DOES THE BILL 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.	None anticipated.

ADDITIONAL COMMENTS

Division of Alcoholic Beverages and Tobacco: The proposal requires each manufacturer, distributor, broker, "supplier", sales agent, and importer shall make a full and complete report by the 10th day of each month for the previous calendar month and submitted to the division through the division's electronic data submission system.

The requirement for electronic filing will streamline the reporting process for both licensee and division. The data entered will have been curated by the licensee, resulting in a reduction of possible data entry errors. The requirement will also result in reduction in costs related to paper reporting such as postage, document storage, and destruction.
The electronic data submission system is operational outside of normal business hours giving the licensee extra time and flexibility to meet the reporting deadline.
The data submitted is housed in one system that feeds the reported information directly into the audit module, streamlining the document and data gathering process necessary for conducting audits.

The proposal expands the audit timeframes that a food service establishment must derive at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages, as follows:

- A first audit conducted following the first 120-day operating period, as opposed to the current 60-day operating period; and
- A second audit performed on the following 12-month operating period.

Instead of audits performed on each 12 month operating periods thereafter, subsequent audit timeframes will be based upon the audit percentage established by the most recent audit and conducted on a staggered scale as follows:

- Level 1, 51 to 60 percent, every year;
- Level 2, 61 to 75 percent, every 2 years;
- Level 3, 76 to 90 percent, every 3 years; and
- Level 4, 91 to 100 percent, every 4 years.

The expanded audit timeframes will result in less burdensome regulation on compliant licensees and will help direct the division's auditing resources to more substantial areas of non-compliance.

Division of Hotels and Restaurants: Division license renewals are currently run in batches by the Division of Technology. If the bill is implemented, the division would require assistance from the Division of Technology in running and printing renewals on a daily basis as needed.

Division of Condominiums, Timeshares and Mobile Homes: No additional comments

OGC Rules: Section 2 of the bill replaces the term “return” with “full and complete report,” however, the statutory title has not been revised to reflect such change.

Division of Professions: No additional comments.

Division of Service Operations: The impact to Intake Services will be minimal and can be handled with existing resources; however the impact to the Call Center is indeterminate because they may see an increase in calls received.

LEGAL - GENERAL COUNSEL’S OFFICE REVIEW

Issues/concerns/comments:	No additional comment.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/2020
Meeting Date

912
Bill Number (if applicable)

Topic SB-912 Department of Business & Professional Regulation
Amendment Barcode (if applicable)

Name Colton Madill

Job Title Deputy Legislative Affairs Director

Address 2601 Blair Stone Road
Street

Tallahassee FL 32399
City *State* *Zip*

Phone (850)487-4827

Email colton.madill@myfloridalicense.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing DBPR

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

COMMITTEE VOTE RECORD

COMMITTEE: Innovation, Industry, and Technology
ITEM: SB 912
FINAL ACTION: Favorable
MEETING DATE: Monday, February 10, 2020
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Building

FINAL VOTE			2/03/2020 1 Not considered		2/10/2020 2 Amendment 283054 Brandes		2/10/2020 3 Amendment 974940 Brandes	
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bracy						
X		Bradley						
X		Brandes						
X		Braynon						
X		Farmer						
X		Gibson						
X		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
10	0	**TOTALS**	-	OO	-	WD	-	WD
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Innovation, Industry, and Technology
ITEM: SB 912
FINAL ACTION: Favorable
MEETING DATE: Monday, February 10, 2020
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Building

	2/10/2020 4 Amendment 261994 Brandes							
SENATORS	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
Bracy								
Bradley								
Brandes								
Braynon								
Farmer								
Gibson								
Hutson								
Passidomo								
Benacquisto, VICE CHAIR								
Simpson, CHAIR								
TOTALS	-	WD						
	Yea	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
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TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By Senator Diaz

36-00914A-20 2020912__

A bill to be entitled

An act relating to the Department of Business and Professional Regulation; amending s. 210.09, F.S.; requiring that certain reports relating to the transportation or possession of cigarettes be filed with the Division of Alcoholic Beverages and Tobacco through the division's electronic data submission system; amending s. 210.55, F.S.; requiring that certain entities file reports, rather than returns, relating to tobacco products with the division; providing requirements for such reports; amending s. 509.241, F.S.; revising rulemaking requirements relating to public lodging and food service licenses; amending s. 509.251, F.S.; deleting provisions relating to fee schedule requirements; specifying that all fees are payable in full upon submission of an application for a public lodging establishment license or a public food service license; amending s. 548.003, F.S.; renaming the Florida State Boxing Commission as the Florida Athletic Commission; amending s. 548.043, F.S.; revising rulemaking requirements for the commission relating to gloves; amending s. 561.01, F.S.; deleting the definition of the term "permit carrier"; amending s. 561.17, F.S.; revising a requirement related to the filing of fingerprints with the division; requiring that applications be accompanied by certain information relating to right of occupancy; providing requirements relating to contact information for licensees and permittees;

amending s. 561.20, F.S.; conforming cross-references; revising requirements for issuing special licenses to certain food service establishments; amending s. 561.42, F.S.; requiring the division, and authorizing vendors, to use electronic mail to give certain notice; amending s. 561.55, F.S.; revising requirements for reports relating to alcoholic beverages; amending s. 718.112, F.S.; providing the circumstances under which a person is delinquent in the payment of an assessment in the context of eligibility for membership on certain condominium boards; requiring that an annual budget be proposed to unit owners and adopted by the board before a specified time; amending s. 718.501, F.S.; authorizing the Division of Florida Condominiums, Timeshares, and Mobile Homes to adopt rules regarding the submission of complaints against a condominium association; amending s. 718.5014, F.S.; revising the location requirements for the principal office of the condominium ombudsman; amending ss. 455.219, 548.002, 548.05, 548.071, and 548.077, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (2) of section 210.09, Florida Statutes, is amended to read:

210.09 Records to be kept; reports to be made;

examination.—

(2) The division is authorized to prescribe and promulgate by rules and regulations, which shall have the force and effect of the law, such records to be kept and reports to be made to the division by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state as may be necessary to collect and properly distribute the taxes imposed by s. 210.02. All reports shall be made on or before the 10th day of the month following the month for which the report is made, unless the division by rule or regulation shall prescribe that reports be made more often. All reports shall be filed with the division through the division's electronic data submission system.

Section 2. Subsection (1) of section 210.55, Florida Statutes, is amended to read:

210.55 Distributors; monthly returns.—

(1) On or before the 10th of each month, every taxpayer with a place of business in this state shall file a full and complete report ~~return~~ with the division showing the tobacco products ~~taxable price of each tobacco product~~ brought or caused to be brought into this state for sale, or made, manufactured, or fabricated in this state for sale in this state, during the preceding month. Every taxpayer outside this state shall file a full and complete report with the division through the division's electronic data submission system ~~return~~ showing the quantity and taxable price of each tobacco product shipped or transported to retailers in this state, to be sold by those retailers, during the preceding month. Reports must ~~Returns~~

~~shall~~ be made upon forms furnished and prescribed by the division and must ~~shall~~ contain any other information that the division requires. Each report must ~~return shall~~ be accompanied by a remittance for the full tax liability shown and be filed with the division through the division's electronic data submission system.

Section 3. Subsection (1) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(1) LICENSES; ANNUAL RENEWALS.—Each public lodging establishment and public food service establishment shall obtain a license from the division. Such license may not be transferred from one place or individual to another. It shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for such an establishment to operate without a license. Local law enforcement shall provide immediate assistance in pursuing an illegally operating establishment. The division may refuse a license, or a renewal thereof, to any establishment that is not constructed and maintained in accordance with law and with the rules of the division. The division may refuse to issue a license, or a renewal thereof, to any establishment an operator of which, within the preceding 5 years, has been adjudicated guilty of, or has forfeited a bond when charged with, any crime reflecting on professional character, including soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in controlled substances as defined in chapter 893, whether in this state or in any other jurisdiction within the United States, or has had a license denied, revoked,

or suspended pursuant to s. 429.14. Licenses shall be renewed annually, and the division shall adopt rules ~~a rule~~ establishing procedures ~~a staggered schedule~~ for license issuance and renewals. If any license expires while administrative charges are pending against the license, the proceedings against the license shall continue to conclusion as if the license were still in effect.

Section 4. Subsections (1) and (2) of section 509.251, Florida Statutes, are amended to read:

509.251 License fees.—

(1) The division shall adopt, by rule, a schedule of fees to be paid by each public lodging establishment as a prerequisite to issuance or renewal of a license. Such fees shall be based on the number of rental units in the establishment. The aggregate fee per establishment charged any public lodging establishment may not exceed $1,000; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. Vacation rental units or timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application, and the division shall charge a license fee as if all units in the application are in a single licensed establishment. ~~The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months before the next such renewal period and one-half of the fee if application is made 6 months or less before such period.~~ The fee schedule shall include fees collected for the purpose of funding the

Hospitality Education Program, pursuant to s. 509.302. All fees~~, which~~ are payable in full for each application at the time ~~regardless of when~~ the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law.

(2) The division shall adopt, by rule, a schedule of fees to be paid by each public food service establishment as a prerequisite to issuance or renewal of a license. The fee schedule shall prescribe a basic fee and additional fees based on seating capacity and services offered. The aggregate fee per establishment charged any public food service establishment may not exceed $400; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. ~~The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months before the next such renewal period and one-half of the fee if application is made 6 months or less before such period.~~ The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302. All fees~~, which~~ are payable in full for each application at the time ~~regardless of when~~ the application is

submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law.

Section 5. Section 548.003, Florida Statutes, is amended to read:

548.003 Florida Athletic ~~State Boxing~~ Commission.—

(1) The Florida Athletic ~~State Boxing~~ Commission is created and is assigned to the Department of Business and Professional Regulation for administrative and fiscal accountability purposes only. The ~~Florida State Boxing~~ commission shall consist of five members appointed by the Governor, subject to confirmation by the Senate. One member must be a physician licensed pursuant to chapter 458 or chapter 459, who must maintain an unencumbered license in good standing, and who must, at the time of her or his appointment, have practiced medicine for at least 5 years. Upon the expiration of the term of a commissioner, the Governor shall appoint a successor to serve for a 4-year term. A commissioner whose term has expired shall continue to serve on the commission until such time as a replacement is appointed. If a vacancy on the commission occurs prior to the expiration of the term, it shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(2) The ~~Florida State Boxing~~ commission, as created by subsection (1), shall administer the provisions of this chapter. The commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission, including, but not limited to:

(a) Development of an ethical code of conduct for commissioners, commission staff, and commission officials.

(b) Facility and safety requirements relating to the ring, floor plan and apron seating, emergency medical equipment and services, and other equipment and services necessary for the conduct of a program of matches.

(c) Requirements regarding a participant’s apparel, bandages, handwraps, gloves, mouthpiece, and appearance during a match.

(d) Requirements relating to a manager’s participation, presence, and conduct during a match.

(e) Duties and responsibilities of all licensees under this chapter.

(f) Procedures for hearings and resolution of disputes.

(g) Qualifications for appointment of referees and judges.

(h) Qualifications for and appointment of chief inspectors and inspectors and duties and responsibilities of chief inspectors and inspectors with respect to oversight and coordination of activities for each program of matches regulated under this chapter.

(i) Designation and duties of a knockdown timekeeper.

(j) Setting fee and reimbursement schedules for referees and other officials appointed by the commission or the

representative of the commission.

(k) Establishment of criteria for approval, disapproval, suspension of approval, and revocation of approval of amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts held in this state, including, but not limited to, the health and safety standards the organizations use before, during, and after the matches to ensure the health, safety, and well-being of the amateurs participating in the matches, including the qualifications and numbers of health care personnel required to be present, the qualifications required for referees, and other requirements relating to the health, safety, and well-being of the amateurs participating in the matches. The commission may adopt by rule, or incorporate by reference into rule, the health and safety standards of USA Boxing as the minimum health and safety standards for an amateur boxing sanctioning organization, the health and safety standards of the International Sport Kickboxing Association as the minimum health and safety standards for an amateur kickboxing sanctioning organization, and the minimum health and safety standards for an amateur mixed martial arts sanctioning organization. The commission shall review its rules for necessary revision at least every 2 years and may adopt by rule, or incorporate by reference into rule, the then-existing current health and safety standards of USA Boxing and the International Sport Kickboxing Association. The commission may adopt emergency rules to administer this paragraph.

(3) The commission shall maintain an office in Tallahassee. At the first meeting of the commission after June 1 of each year, the commission shall select a chair and a vice chair from

among its membership. Three members shall constitute a quorum and the concurrence of at least three members is necessary for official commission action.

(4) Three consecutive unexcused absences or absences constituting 50 percent or more of the commission's meetings within any 12-month period shall cause the commission membership of the member in question to become void, and the position shall be considered vacant. The commission shall, by rule, define unexcused absences.

(5) Each commission member shall be accountable to the Governor for the proper performance of duties as a member of the commission. The Governor shall cause to be investigated any complaint or unfavorable report received by the Governor or the department concerning an action of the commission or any member and shall take appropriate action thereon. The Governor may remove from office any member for malfeasance, unethical conduct, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, or pleading guilty or nolo contendere to or being found guilty of a felony.

(6) Each member of the commission shall be compensated at the rate of $50 for each day she or he attends a commission meeting and shall be reimbursed for other expenses as provided in s. 112.061.

(7) The commission shall be authorized to join and participate in the activities of the Association of Boxing Commissions (ABC).

(8) The department shall provide all legal and investigative services necessary to implement this chapter. The department may adopt rules as provided in ss. 120.536(1) and

120.54 to carry out its duties under this chapter.

Section 6. Subsection (3) of section 548.043, Florida Statutes, is amended to read:

548.043 Weights and classes, limitations; gloves.—

(3) The commission shall establish by rule the need for gloves, if any, and the weight of any such gloves to be used in each pugilistic match ~~the appropriate weight of gloves to be used in each boxing match; however, all participants in boxing matches shall wear gloves weighing not less than 8 ounces each and participants in mixed martial arts matches shall wear gloves weighing 4 to 8 ounces each~~. Participants shall wear such protective devices as the commission deems necessary.

Section 7. Subsection (20) of section 561.01, Florida Statutes, is amended to read:

561.01 Definitions.—As used in the Beverage Law:

~~(20) "Permit carrier" means a licensee authorized to make deliveries as provided in s. 561.57.~~

Section 8. Subsections (1) and (2) of section 561.17, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

561.17 License and registration applications; approved person.—

(1) Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, shall file, with the district licensing personnel of the district of the division in which the place of business for which a license is sought is located, a sworn application in the format prescribed by the division. The applicant must be a legal or business entity, person, or persons

and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. However, the applicant does not include any person that derives revenue from the license solely through a contractual relationship with the licensee, the substance of which contractual relationship is not related to the control of the sale of alcoholic beverages. Before any application is approved, the division may require the applicant to file a set of fingerprints electronically through an approved electronic fingerprinting vendor or on ~~regular United States Department of Justice~~ forms prescribed by the Florida Department of Law Enforcement for herself or himself and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, when required by the division. If the applicant or any person who is interested with the applicant either directly or indirectly in the business or who has a security interest in the license being sought or has a right to a percentage payment from the proceeds of the business, either by lease or otherwise, is not qualified, the division shall deny the application. However, any company regularly traded on a national securities exchange and not over the counter; any insurer, as defined in the Florida Insurance Code; or any bank or savings and loan association chartered by this state, another state, or the United States which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain the division's approval of its officers, directors, or stockholders or any change of such positions or interests. A shopping center with five or more

stores, one or more of which has an alcoholic beverage license and is required under a lease common to all shopping center tenants to pay no more than 10 percent of the gross proceeds of the business holding the license to the shopping center, is not considered as having an interest, directly or indirectly, in the license. A performing arts center, as defined in s. 561.01, which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain division approval of its volunteer officers or directors or of any change in such positions or interests.

(2) All applications for any alcoholic beverage license must be accompanied by proof of the applicant's right of occupancy for the entire premises sought to be licensed. All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.

(5) Any person or entity licensed or permitted by the division must provide an electronic mail address to the division to function as the primary contact for all communication by the division to the licensee or permittees. Licensees and permittees are responsible for maintaining accurate contact information on file with the division.

Section 9. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

(2)(a) The limitation of the number of licenses as provided in this section does not prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under chapter 509, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

4. A food service establishment that has 2,500 square feet of service area, is equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 120-day ~~60-day~~ operating period and the first ~~each~~ 12-month operating period thereafter. Subsequent audit timeframes must be based upon the audit percentage established by the most recent audit and conducted on a staggered scale as follows: level 1, 51 percent to 60 percent, every year; level 2, 61 percent to 75 percent, every 2 years; level 3, 76 percent to 90 percent, every 3 years; and level 4, 91 percent to 100 percent, every 4 years. A food service establishment granted a special license on or after January 1, 1958, pursuant to general or special law may not operate as a

package store and may not sell intoxicating beverages under such license after the hours of serving or consumption of food have elapsed. Failure by a licensee to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period shall result in revocation of the license or denial of the pending license application. A licensee whose license is revoked or an applicant whose pending application is denied, or any person required to qualify on the special license application, is ineligible to have any interest in a subsequent application for such a license for a period of 120 days after the date of the final denial or revocation;

5. Any caterer, deriving at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages at each catered event, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. Notwithstanding any law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this

subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this subparagraph. Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph shall not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are

otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first $300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072; or

6. A culinary education program as defined in s. 381.0072(2) which is licensed as a public food service establishment by the Division of Hotels and Restaurants.

a. This special license shall allow the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated pursuant to s. 561.01(11) and may not be removed from the designated area. Such license shall be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A

culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this subparagraph shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any

restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

Section 10. Subsection (4) of section 561.42, Florida Statutes, is amended to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(4) Before the division shall so declare and prohibit such sales to such vendor, ~~it shall,~~ within 2 days after receipt of such notice~~,~~ the division shall give ~~written~~ notice to such vendor by electronic mail of the receipt by the division of such notification of delinquency and such vendor shall be directed to forthwith make payment thereof or, upon failure to do so, to show cause before the division why further sales to such vendor shall not be prohibited. Good and sufficient cause to prevent such action by the division may be made by showing payment, failure of consideration, or any other defense which would be considered sufficient in a common-law action. The vendor shall

have 5 days after service ~~receipt~~ of such notice via electronic mail within which to show such cause, and he or she may demand a hearing thereon, provided he or she does so in writing within said 5 days, such written demand to be delivered to the division either in person, by electronic mail, or by due course of mail within such 5 days. If no such demand for hearing is made, the division shall thereupon declare in writing to such vendor and to all manufacturers and distributors within the state that all further sales to such vendor are prohibited until such time as the division certifies in writing that such vendor has fully paid for all liquors previously purchased. In the event such prohibition of sales and declaration thereof to the vendor, manufacturers, and distributors is ordered by the division, the vendor may seek review of such decision by the Department of Business and Professional Regulation within 5 days. In the event application for such review is filed within such time, such prohibition of sales shall not be made, published, or declared until final disposition of such review by the department.

Section 11. Subsection (2) of section 561.55, Florida Statutes, is amended to read:

561.55 Manufacturers', distributors', brokers', sales agents', importers', vendors', and exporters' records and reports.—

(2) Each manufacturer, distributor, broker, sales agent, and importer shall make a full and complete report by the 10th day of each month for the previous calendar month. The report must be ~~shall be made out in triplicate; two copies shall be sent to the division, and the third copy shall be retained for the manufacturer's, distributor's, broker's, sales agent's, or~~

~~importer's record. Reports shall be~~ made on forms prepared ~~and furnished~~ by the division and filed with the division through the division's electronic data submission system.

Section 12. Paragraphs (d) and (f) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members

may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent

in the payment of any assessment ~~monetary obligation~~ due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the monthly or quarterly assessment period. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of unit owner

meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association’s official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically

transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must

give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting.

Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's

election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass emails sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items.

However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different

voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The annual budget must be proposed to unit owners and adopted by the board of directors no later than 30 days before the beginning of the fiscal year. A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a

deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.

b. Before turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget

shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

Section 13. Paragraph (m) of subsection (1) of section 718.501, Florida Statutes, is amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with the provisions of this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12).

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90

days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

Section 14. Section 718.5014, Florida Statutes, is amended to read:

718.5014 Ombudsman location.—The ombudsman shall maintain his or her principal office at a ~~in Leon County on the premises of the division or, if suitable space cannot be provided there, at another~~ place convenient to the offices of the division which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

Section 15. Subsection (1) of section 455.219, Florida Statutes, is amended to read:

455.219 Fees; receipts; disposition; periodic management reports.—

(1) Each board within the department shall determine by rule the amount of license fees for its profession, based upon department-prepared long-range estimates of the revenue required to implement all provisions of law relating to the regulation of professions by the department and any board; however, when the

department has determined, based on the long-range estimates of such revenue, that a profession's trust fund moneys are in excess of the amount required to cover the necessary functions of the board, or the department when there is no board, the department may adopt rules to implement a waiver of license renewal fees for that profession for a period not to exceed 2 years, as determined by the department. Each board, or the department when there is no board, shall ensure license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the department, with advice of the applicable board. If sufficient action is not taken by a board within 1 year of notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature. Further, it is legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for the advancement of sufficient funds to any profession or the Florida Athletic ~~State Boxing~~ Commission operating with a negative cash balance. Such advancement may be for a period not to exceed 2 consecutive years and shall require interest to be paid by the regulated profession. Interest shall be calculated at the current rate earned on Professional Regulation Trust Fund investments. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.

Section 16. Subsection (4) of section 548.002, Florida

Statutes, is amended to read:

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

(4) "Commission" means the Florida Athletic ~~State Boxing~~ Commission.

Section 17. Subsections (3) and (4) of section 548.05, Florida Statutes, are amended to read:

548.05 Control of contracts.—

(3) The commission may require that each contract contain language authorizing the ~~Florida State Boxing~~ commission to withhold any or all of any manager's share of a purse in the event of a contractual dispute as to entitlement to any portion of a purse. The commission may establish rules governing the manner of resolution of such dispute. In addition, if the commission deems it appropriate, the commission is hereby authorized to implead interested parties over any disputed funds into the appropriate circuit court for resolution of the dispute prior to release of all or any part of the funds.

(4) Each contract subject to this section shall contain the following clause: "This agreement is subject to the provisions of chapter 548, Florida Statutes, and to the rules of the Florida Athletic ~~State Boxing~~ Commission and to any future amendments of either."

Section 18. Subsection (12) of section 548.071, Florida Statutes, is amended to read:

548.071 Suspension or revocation of license or permit by commission.—The commission may suspend or revoke a license or permit if the commission finds that the licensee or permittee:

(12) Has been disciplined by the ~~Florida State Boxing~~ commission or similar agency or body of any jurisdiction.

Section 19. Section 548.077, Florida Statutes, is amended to read:

548.077 Florida Athletic ~~State Boxing~~ Commission; collection and disposition of moneys.—All fees, fines, forfeitures, and other moneys collected under the provisions of this chapter shall be paid by the commission to the Chief Financial Officer who, after the expenses of the commission are paid, shall deposit them in the Professional Regulation Trust Fund to be used for the administration and operation of the commission and to enforce the laws and rules under its jurisdiction. In the event the unexpended balance of such moneys collected under the provisions of this chapter exceeds $250,000, any excess of that amount shall be deposited in the General Revenue Fund.

Section 20. This act shall take effect July 1, 2020.

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 Innovation, Industry, and Technology

BILL:	SPB 7052
INTRODUCER:	Innovation, Industry and Technology Committee
SUBJECT:	Office of Public Counsel
DATE:	February 7, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof		**IT Submitted as a Comm.Bill/Fav**

I. Summary:

SPB 7052 establishes a four-year term for the Public Counsel beginning March 1, 2021. The bill clarifies the Public Counsel serves at the pleasure of the joint committee and is appointed by a majority vote of the committee appointees of each house, and provides the committee may remove the Public Counsel with a majority vote of the committee appointees of each house.

The bill requires the joint committee to receive applications, conduct interviews, and appoint a Public Counsel to a four-year term beginning on March 1, 2021, and every four years thereafter. The Public Counsel may continue in office beyond the four-year limit until his or her successor is appointed and takes office, unless removed by the committee. In no event may a person serve as the Public Counsel for more than 12 consecutive years.

The bill takes effect July 1, 2020.

II. Present Situation:

The Joint Committee on Public Counsel Oversight is a standing joint committee established by the Joint Rules of the Florida Legislature.[1] No fewer than five and no more than seven members of each house must be appointed to serve on the joint committee.[2] The joint committee has the authority to appoint a Public Counsel.[3]

The Public Counsel must be an attorney admitted to practice before the Florida Supreme Court. The Public Counsel is appointed by the joint committee and serves at the pleasure of the joint committee, subject to biennial reconfirmation.[4]

[1] Joint Rule 4.1(1)(b), Joint Rules of the Florida Legislature.
[2] Joint Rule 4.1(3), Joint Rules of the Florida Legislature.
[3] Joint Rule 4.7, Joint Rules of the Florida Legislature, and s. 350.061, F.S.
[4] Section 350.061(1), F.S.

The Public Counsel has the statutory duty to provide legal representation for the people of the state in proceedings before the Florida Public Service Commission and in proceedings concerning a water or wastewater utility before counties that have opted out of PSC jurisdiction over such utilities.[5]

The Public Counsel is under the legislative branch, and the Governor has no power to release or withhold funds appropriated to it or to determine the number, or fix the compensation, of the employees of the Public Counsel or to exercise any control over them.[6]

The Public Counsel is appointed by and serves at the pleasure of the committee, and is subject to biennial reconfirmation. Vacancies in the office are to be filled in the same manner as the original appointment. The Public Counsel is to perform his or her duties independently.[7]

III. Effect of Proposed Changes:

The bill establishes a four-year term for the Public Counsel beginning March 1, 2021. The bill provides that the Public Counsel is to be appointed by a majority vote of the committee appointees of each house and the joint committee may remove the Public Counsel with a majority vote of the committee appointees of each house.

The bill requires the joint committee to receive applications, conduct interviews, and appoint a Public Counsel to a four-year term beginning on March 1, 2021, and every four years thereafter. The Public Counsel may continue in office beyond the four-year limit until his or her successor is appointed and takes office, unless removed by the committee. In no event may a person serve as the Public Counsel for more than 12 consecutive years.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[5] Section 350.0611, F.S.
[6] Section 350.0614, F.S.
[7] Section 350.061, F.S.

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 350.061 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.

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

02/10/2020
Meeting Date

SPB 7052
Bill Number (if applicable)

Topic Office of Public Counsel

Amendment Barcode (if applicable)

Name Bradley Marshall

Job Title Staff Attorney, Earthjustice

Address 111 S. Martin Luther King Jr. Blvd.
Street

Phone 850-681-0031

Tallahassee FL 32301
City *State* *Zip*

Email bmarshall@earthjustice.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Earthjustice

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)

2/10/20
Meeting Date

1052
Bill Number (if applicable)

Topic OPC

Amendment Barcode (if applicable)

Name Leighanne Boone

Job Title President

Address 300 S. Duval St.
Street

Phone

Tallahassee FL 32301
City *State* *Zip*

Email Leighanne.Boone@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing ReThink Energy Action Fund

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

10-Feb-2020
Meeting Date

7052
Bill Number (if applicable)

Topic Public Counsel Term Limit

Amendment Barcode (if applicable)

Name Ken Hays

Job Title Retired

Address 1935 Nanticoke Circle
Street

Tallahassee FL 32303
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Concerned Citizens

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date	Bill Number (if applicable)
	SPB 7052

Topic Office of Public Counsel

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Exec. Director

Address 579 E. Call St. (Street)

Tallahassee, FL 32301 (City / State / Zip)

Phone 850-321-9386

Email fcfep7yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/2020
Meeting Date

7052
Bill Number (if applicable)

Topic office of Public Counsel

Amendment Barcode (if applicable)

Name JONATHAN WEBBER

Job Title Deputy DIRector

Address 1700 N. Monroe St. #11-286
Street

Phone 954-593-4449

Tallahassee FL 32303
City *State* *Zip*

Email JWEBBER@FCVOTERS.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA CONSERVATION VOTERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

2/10/20
Meeting Date

7052
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

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Street

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Phone 941-373-2404

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Speaking: ☐ For ☑ Against ☐ Information

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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)

2-10-20
Meeting Date

7052
Bill Number (if applicable)

Topic Office of Public Counsel

Amendment Barcode (if applicable)

Name Brian Lee

Job Title Florida Legislative Director

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing Food & Water Watch

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

COMMITTEE VOTE RECORD

COMMITTEE: Innovation, Industry, and Technology
ITEM: SPB 7052
FINAL ACTION: Submitted and Reported Favorably as Committee Bill
MEETING DATE: Monday, February 10, 2020
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Building

FINAL VOTE			2/10/2020 1 Motion to submit as Committee Bill Passidomo					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bracy						
X		Bradley						
		Brandes						
	X	Braynon						
	X	Farmer						
	X	Gibson						
X		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
6	3	**TOTALS**	FAV	-				
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

FOR CONSIDERATION By the Committee on Innovation, Industry, and Technology

580-03067B-20 20207052pb

A bill to be entitled

An act relating to the Office of Public Counsel; amending s. 350.061, F.S.; providing term limits for the Public Counsel; providing for the appointment and removal of the Public Counsel; requiring the Committee on Public Counsel Oversight to receive applications, conduct interviews, and appoint a Public Counsel by a specified date every 4 years; providing for the filling of vacancies; providing an effective date.

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

Section 1. Subsection (1) of section 350.061, Florida Statutes, is amended to read:

350.061 Public Counsel; appointment; oath; restrictions on Public Counsel and his or her employees.—

(1) The committee designated by joint rule of the Legislature or by agreement between the President of the Senate and the Speaker of the House of Representatives as the Committee on Public Counsel Oversight shall appoint a Public Counsel to represent the general public of Florida before the Florida Public Service Commission. The Public Counsel shall be an attorney admitted to practice before the Florida Supreme Court, ~~and~~ shall be appointed for a term of 4 years, and may be reappointed thereafter, provided that a person appointed as the Public Counsel may not serve more than 12 consecutive years in the position. The Public Counsel shall be appointed by a majority vote of the committee appointees of each house and may be removed from office by a majority vote of the committee

appointees of each house. A person may continue as Public Counsel beyond the 4-year term until his or her successor is appointed and takes office, unless the person is removed by a vote of the committee. The Committee on Public Counsel Oversight shall receive applications, conduct interviews, and appoint a Public Counsel to a 4-year term beginning on March 1, 2021, and every 4 years thereafter ~~serve at the pleasure of the Committee on Public Counsel Oversight, subject to biennial reconfirmation by the committee~~. The Public Counsel shall perform his or her duties independently. Vacancies in the office shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

Section 2. This act shall take effect July 1, 2020.

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 Innovation, Industry, and Technology

BILL:	CS/SB 1352
INTRODUCER:	Innovation, Industry, and Technology Committee and Senator Brandes
SUBJECT:	Transportation Companies
DATE:	February 11, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	IS	**Favorable**
2.	Wiehle	Imhof	IT	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1352 establishes a regulatory framework for digital advertising on transportation network company vehicles and for luxury ground transportation network company vehicles, preempting such regulation to the state.

To the extent that local governments currently collect revenue from regulation of digital advertising on vehicles, or fees from regulation of limousines and luxury sedans, that revenue will be negatively impacted. However, the extent of any impact is indeterminate.

The bill takes effect upon becoming law.

II. Present Situation:

Technological advances have led to new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages. Ridesharing companies, such as Lyft, Uber, and SideCar, describe themselves as transportation network companies (TNCs), rather than as vehicles for hire.

TNCs use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs onto a phone application and indicates the driver is ready to accept passengers. Potential passengers log on, learn which drivers are nearby, see photographs, receive

a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and drives to pick up the passenger. Once at the destination, payment is made through the phone application.

Florida law currently contains a number of provisions relating to TNCs.

Definitions

Section 627.748(1), F.S. provides a number of relevant definitions:

- "Transportation network company" or "TNC" means an entity operating in this state using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association or for-hire vehicle owner.[1]
- "Prearranged ride" means the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a TNC, continuing while the TNC driver transports the requesting rider, and ending when the last requesting rider exits from and is no longer occupying the TNC vehicle. The term does not include a taxicab, for-hire vehicle, or street hail service and does not include ridesharing, carpool, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.
- "Rider" means an individual who uses a digital network to connect with a TNC driver in order to obtain a prearranged ride in the TNC driver's TNC vehicle between points chosen by the rider.
- "Transportation network company driver" or "TNC driver" means an individual who receives connections to potential riders and related services from a TNC and, in return for compensation, uses a TNC vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network.
- "Transportation network company vehicle" or "TNC vehicle" means a vehicle that is *not* a taxicab, jitney, limousine,[2] or for-hire vehicle,[3] that is used by a TNC driver to offer or

[1] The term does not include entities arranging nonemergency medical transportation for individuals who qualify for Medicaid or Medicare pursuant to a contract with the state or a managed care organization, but does not prohibit a TNC from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of s. 627.748, F.S.

[2] The terms "taxicab," "jitney," and "limousine" are not defined in the Florida Statutes.

[3] Section 320.01(15), F.S., defines the term "for-hire vehicle" as any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire." The following are not included a for-hire vehicle: a motor vehicle used for transporting school children to and from school under contract with school officials; a hearse or ambulance when operated by a licensed embalmer or mortician or his or her agent or employee in this state; a motor vehicle used in the transportation of agricultural or horticultural products or in transporting agricultural or horticultural supplies direct to growers or the consumers of such supplies or to associations of such growers or consumers; a motor vehicle temporarily used by a farmer for the transportation of agricultural or horticultural products from any farm or grove to a packinghouse or to a point of shipment by a transportation company; or a motor vehicle not exceeding

provide a prearranged ride and owned, leased, or otherwise authorized to be used by the TNC driver.
- "Digital network" means any online-enabled technology application service, website, or system offered or used by a TNC which enables the prearrangement of rides with TNC drivers.

A vehicle that is let or rented to another for consideration may be used as a TNC vehicle.[4]

Preemption

Current law also recites the Legislature's intent to provide for uniformity of laws governing TNCs, TNC drivers, and TNC vehicles throughout the state. "TNC vehicles are governed exclusively by state law, including in any locality or other jurisdiction that enacted a law or created rules governing TNCs, TNC drivers, or TNC vehicles before July 1, 2017."[5] A county, municipality, special district, airport authority, port authority, or other local government entity or subdivision is prohibited from:
- Imposing a tax on or requiring a license for a TNC, TNC driver, or TNC vehicle if such tax or license relates to providing prearranged rides;
- Subjecting a TNC, TNC driver, or TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or
- Requiring a TNC or TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.

Insurance Requirements for TNCs and TNC Drivers

Section 627.748(7), F.S., addresses insurance requirements for TNCs and TNC drivers. A TNC driver, or a TNC on behalf of the TNC driver, must maintain primary automobile insurance that:
- Recognizes that the TNC driver is a TNC driver or otherwise uses a vehicle to transport riders for compensation; and
- Covers the TNC driver while the TNC driver is logged on to the TNC's digital network or while the TNC driver is engaged in a prearranged ride.

When a TNC driver is logged on to the digital network but is not engaged in a prearranged ride, the TNC or TNC driver must have automobile insurance that provides:
- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;
- Personal injury protection (PIP) benefits that meet the minimum coverage amounts required of a limousine under the Florida Motor Vehicle No-Fault Law (which requires every owner and registrant of a motor vehicle in this state to maintain PIP coverage, which compensates persons injured in accidents regardless of fault);[6] and

1.5 tons under contract with the Government of the United States to carry United States mail, provided such vehicle is not used for commercial purposes

[4] Section 627.748(g), F.S.

[5] Section 627.748(15), F.S.

[6] Sections 627.730-627.7405, F.S. However, s. 627.733(1), F.S., exempts limousines from the Florida Motor Vehicle No-Fault Law. As a result, when logged on to the digital network but not engaged in a prearranged ride, the TNC or TNC driver is not required to have PIP coverage.

- Uninsured and underinsured vehicle coverage.[7]

When a TNC driver is engaged in a prearranged ride, the automobile insurance must provide:
- Primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;
- PIP benefits that meet the minimum coverage amounts required of a limousine under the Florida Motor Vehicle No-Fault Law;[8] and
- Uninsured and under insured vehicle coverage.

The coverage requirements may be satisfied by automobile insurance maintained by the TNC driver, an automobile insurance policy maintained by the TNC, or a combination of automobile insurance policies maintained by the TNC driver and the TNC.

If the TNC driver's insurance policy has lapsed or does not provide the required coverage, the insurance maintained by the TNC must provide the required coverage, beginning with the first dollar of a claim, and have the duty to defend such claim.[9] Coverage under an automobile insurance policy maintained by the TNC must not be dependent on a personal automobile insurer first denying a claim, and a personal automobile insurance policy is not required to first deny a claim.[10] The required insurance must be provided by an insurer authorized to do business in this state, which is a member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation.[11] Insurance satisfying the above requirements is deemed to satisfy the financial responsibility requirement for a motor vehicle under the Financial Responsibility Law of 1955[12] and the security required under the Florida Motor Vehicle No-Fault Law.[13]

An insurer that provides an automobile liability insurance policy under part XI of Ch. 627, F.S.,[14] may exclude any and all coverage afforded under the policy issued to an owner or operator of a TNC vehicle for any loss or injury that occurs while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. This right to exclude all coverage

[7] Generally, uninsured and underinsured vehicle coverage provides the policyholder with benefits even if the injured person is at fault in an accident. This vehicle coverage is required by s. 627.727, F.S.
[8] As a result of the exemption of limousines from the Florida Motor Vehicle No-Fault Law, when a TNC driver is engaged in a prearranged ride, the TNC or TNC driver is not required to have PIP coverage.
[9] Section 627.748(7)(d), F.S.
[10] Section 627.748(7)(e), F.S.
[11] Section 627.748(f), F.S. The Florida Insurance Guaranty Association, which was created by legislation, handles the claims of insolvent property and casualty insurance companies. Its membership is composed of all Florida direct writers of property and casualty insurance. For more information on the association, *see* FIGA, available at https://figafacts.com/ (last visited February 4, 2020).
[1212] For private passenger vehicles, the minimum proof of financial responsibility is coverage in the amount of $10,000 for bodily injury to or death of one person in any crash, $20,000 for bodily injury or death of two or more persons in any one crash, and $10,000 for property damage. Section 324.021, F.S. Commercial motor vehicle proof requires coverage by weight, ranging from $50,000 per occurrence to $100,000 per occurrence. Section 627.7415, F.S. Nonpublic sector bus proof requires $100,000/$300,000/$50,000 or a combined policy in the amount of $300,000. Section 627.7415, F.S.
[13] *Supra* note 8.
[14] Part XI relates to motor vehicle and casualty insurance contracts and sets out, among others, the provisions discussed herein relating to the Financial Responsibility Law, the No-Fault Law, and TNC insurance requirements.

may apply to any coverage included in an automobile insurance policy, including, but not limited to:

- Liability coverage for bodily injury and property damage;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage;
- Collision physical damage coverage; and
- Personal injury protection.[15]

The exclusions described above apply notwithstanding any requirement under the Financial Responsibility Law. A personal automobile insurance policy is not required to provide coverage while the TNC driver is logged on to a digital network, while the TNC driver is engaged in a prearranged ride, or while the TNC driver otherwise uses a vehicle to transport riders for compensation. Insurers are not precluded from providing primary or excess coverage for the TNC driver's vehicle by contract or endorsement. An automobile insurer that excludes the coverage described above does not have a duty to defend or indemnify any claim expressly excluded thereunder.[16]

An exclusion contained in a policy for vehicles used to carry persons or property for a charge or available for hire by the public, including a policy in use or approved for use in this state before July 1, 2017, is not invalidated or limited. An automobile insurer that defends or indemnifies a claim against a TNC driver, which is excluded under the terms of the policy, has a right of contribution against other insurers that provide automobile insurance to the same TNC driver in satisfaction of the above TNC coverage requirements at the time of loss.[17]

Other TNC-Related Provisions

Under current law, a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does *not* provide taxicab or for-hire vehicle service. Additionally, a TNC driver is not required to register the vehicle the TNC driver uses to provide prearranged rides as a commercial motor vehicle or a for-hire vehicle.[18] Other provisions require a TNC to designate and maintain

[15] Section 627.748(8)(b), F.S.
[16] *Id*.
[17] *Id*.
[18] Section 627.748(2), F.S. Section 320.0(15), F.S., defines the term "for-hire vehicle," for vehicle registration purposes, to mean any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire." The term does not include " a motor vehicle used for transporting school children to and from school under contract with school officials; a hearse or ambulance when operated by a licensed embalmer or mortician or his or her agent or employee in this state; a motor vehicle used in the transportation of agricultural or horticultural products or in transporting agricultural or horticultural supplies direct to growers or the consumers of such supplies or to associations of such growers or consumers; a motor vehicle temporarily used by a farmer for the transportation of agricultural or horticultural products from any farm or grove to a packinghouse or to a point of shipment by a

an agent for service of process in this state,[19] to disclose information relating to fare transparency,[20] to display a photograph of the TNC driver and the license plate number of the TNC vehicle used to provide a prearranged ride,[21] and to transmit electronic receipts to riders within a reasonable period after completion of a ride.[22]

Additional requirements and related provisions in current law:

- Provide for disclosure of insurance-related information by TNC drivers and TNCs,[23]
- Deem a TNC driver to be an independent contractor,[24]
- Require a TNC to implement a zero-tolerance policy for drug or alcohol use,[25]
- Set out background-check and driving history research provisions with related reporting requirements and penalties,[26]
- List conduct prohibited by a TNC driver or a TNC,[27]
- Require a TNC to adopt a policy of nondiscrimination and provide requirements for accessibility for individuals with disabilities,[28] and
- Address maintenance of records by a TNC.[29]

For-Hire Vehicle Insurance and Registration Requirements

Section 324.032, F.S., generally provides that for-hire passenger transportation vehicles (taxicabs, limousines, jitneys, or any other for-hire transportation vehicle) may prove financial responsibility by furnishing evidence of holding a liability policy with limits of $125,000/$250,000 for bodily injury and $50,000 for property damage. However, the owner or a lessee required to maintain insurance under s. 324.021(9)(b), F.S.,[30] who operates for-hire vehicles, *other than taxicabs*, may prove financial responsibility by providing evidence of holding a liability policy with limits of $10,000/$20,000/$10,000.[31] Further, the owner or a lessee required to maintain insurance under s. 324.021(9)(b), F.S., and who operates at least 300 taxicabs, limousines, jitneys, or any other for-hire vehicle may prove financial responsibility under s. 324.171, F.S., which allows and provides requirements for self-insurance.[32]

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transportation company; or a motor vehicle not exceeding 11/2 tons under contract with the Government of the United States to carry United States mail, provided such vehicle is not used for commercial purposes.

[19] Section 627.748(3), F.S.

[20] Section 627.748(4), F.S.

[21] Section 627.748(5), F.S.

[22] Section 627.748(6), F.S.

[23] Section 627.748(7)(g) and (h), F.S.

[24] Section 627.748(9), F.S.,

[25] Section 627.748(10), F.S.

[26] Section 627.748(11), F.S.

[27] Section 627.748(12), F.S.

[28] Section 627.748(13), F.S.

[29] Section 627.748(14)

[30] That section provides that a lessor, under an agreement to rent or lease a motor vehicle for one year or longer that requires the lessee to obtain insurance, must provide coverage of $100,000/$300,000 for bodily injury and $50,000 for property damage, and is not deemed the owner of the vehicle for purposes of financial responsibility. Also, a lessor, under an agreement to rent or lease a motor vehicle for less than one year, is deemed the owner for purposes of liability for operation of the vehicle up to $100,000/$300,000 for bodily injury and up to $50,000 for property damage.

[31] *See* ss. 324.032(1)(b), 324.031, and 324.021(8), F.S.

[32] Section 324.032(2), F.S. A self-insurance certificate may be obtained from the DHSMV if a person, including any firm, partnership, association, corporation, or other person other than a natural person has a net unencumbered worth of at least

Section 320.08(6), F.S., imposes a $17 flat fee plus $1.50 per cwt[33] for registration of for-hire motor vehicles carrying under nine passengers, and a $17 flat fee plus $2.50 per cwt for such vehicles carrying nine passengers and more.

Local Regulation of Taxis, Limousines, and Other For-Hire Transportation Services

Florida law provides some requirements relating to taxis, limousines, and other for-hire transportation services; for example, minimum insurance and registration requirements (discussed below). Any additional regulation of these services may be established at the local level.

For counties, to the extent not inconsistent with general or special law, the legislative and governing body of a county has the power to carry on county government, including, but not restricted to, the power to license and regulate taxis, jitneys, and limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county.[34] As an example, Miami-Dade County regulates for-hire limousines on a countywide basis under Chapter 31, Article VI of the County Code.[35] The County Code contains requirements such as pre-arranging service at least one hour in advance of the transportation to be provided, requiring drivers to have a for-hire chauffeur registration; and requiring vehicle inspections and operating permits.[36]

Municipalities have broad home rule powers authorizing them to enact legislation concerning any subject matter upon which the state Legislature may act, except:

- The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;
- Any subject expressly prohibited by the constitution;
- Any subject expressly preempted to state or county government by the constitution or by general law; or
- Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.[37]

As noted, regulation of TNCs, TNC drivers, and TNC vehicles is already preempted to the state.

$40,000 for the first motor vehicle and $20,000 for each additional vehicle; or maintain sufficient net worth, as determined annually by the DHSMV, to be financially responsible for potential losses. Section 324.171, F.S.

[33] CWT is a unit of measurement called "hundredweight," and is equal to 100 pounds. *See* Investopedia available at https://www.investopedia.com/terms/h/hundredweight.asp (last visited January 24, 2020).

[34] Section 125.01(1)(n), F.S.

[35] *See* the referenced part of the County Code available at https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIIICOOR_CH31VEHI_ARTVILIREFRELI (last visited January 24, 2020).

[36] For additional detail, *see* Miami-Dade County, *Limousine Service License*, available at https://www8.miamidade.gov/global/license.page?Mduid_license=lic1499972486380630 (last visited January 24, 2020).

[37] Section 166.021(3), F.S.

Local Regulation of Advertising on Vehicles

Some local governments currently regulate advertising on vehicles in some fashion.[38] However, the details and extent of such regulation is unknown.

Prohibition Against Certain Lights

Section 316.2397, F.S., provides that a person may not drive any vehicle or equipment upon any highway in this state with any lamp or device thereon showing or displaying a red, red and white, or blue light visible from directly in front of the vehicle, except for certain exceptions, such as fire department vehicles and road maintenance equipment. That section expressly prohibits any vehicle or equipment, except police vehicles, from showing or displaying blue lights, except for Department of Corrections vehicles or county correctional agency vehicles when responding to emergencies. Flashing lights are prohibited on vehicles except:

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;
- When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so; and
- Flashing lamps authorized under that section; s. 316.2065, F.S. (bicycle riders); and s. 316.235(6), F.S., relating to deceleration lighting systems on buses.

III. Effect of Proposed Changes:

The bill establishes a regulatory framework for TNC digital advertising on TNC Vehicles and for Luxury Ground TNCs.

TNC Digital Advertising

The bill amends s. 627.748(1), F.S., to define the term "transportation network company digital advertising device" or "TNC digital advertising device" to mean a device no larger than 20 inches tall and 54 inches long, which is fixed to the roof of a TNC vehicle and which displays advertisements on a digital screen only while the TNC vehicle is turned on.

The bill creates s. 627.748(11), F.S., authorizing a TNC driver or his or her designee to contract with a company to install a TNC digital advertising device (DAD) on a TNC vehicle. The bill:

- Allows a TNC DAD to be enabled with cellular or WiFi-enabled data transmission and equipped with GPS;
- Limits a TNC DAD to displaying advertisements only when the TNC vehicle is turned on;
- Requires a TNC DAD to follow the lighting requirements of s. 316.2397, F.S.; and
- Prohibits any portion of a TNC DAD from extending beyond the front or rear windshield of the vehicle or from impacting the TNC driver's vision.

The bill requires a TNC DAD to display advertisements only to the sides of the vehicle and not to the front or rear of the vehicle.[39] This appears to be consistent with the provision in

[38] For example, *see* Sec. 19-15.12 of the Miami-Dade County Code available at https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIIICOOR_CH19REPROWMEAC_S19-15.12PRDIVESAADDE (last visited January 24, 2020).

[39] The bill provides that identification of the provider does not constitute advertising.

s. 316.2397, F.S., that prohibits showing or displaying red, red and white, or blue light visible from directly in front of the vehicle.

A TNC DAD must, at a minimum, meet the requirements of the MIL-STD-810G standard[40] or other reasonable environmental and safety industry standard, as determined through independent safety and durability testing under the review of a licensed professional engineer, before being installed on a TNC vehicle.

A TNC DAD may not display advertisements for illegal products or services or advertisements that include nudity, violent images, or disparaging or false advertisements. See "Other Constitutional Issues" below.

All advertisements displayed on a TNC DAD are subject to the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). A TNC driver is immune from liability for the display of an advertisement that violates this section or the FDUTPA unless the TNC driver is the advertiser. The owner or operator of a TNC DAD that displays an advertisement that is in violation of this section or the FDUTPA is immune from liability under this section and the FDUTPA for the violation if the advertisement was displayed in good faith and without actual knowledge of the violation, unless the advertiser is the same person as the owner or operator.

Lastly, the bill provides that for purposes of ch. 627, F.S., a TNC DAD is deemed part of a TNC vehicle.

The bill exempts a TNC from liability by reason of owning, operating, or maintaining the digital network accessed by a TNC driver or rider, or by being the TNC affiliated with a TNC driver, for harm to persons or property that results or arises out of the use, operation, or possession of a motor vehicle operating as a TNC vehicle while the driver is logged on to the digital network if:

- There is no negligence or criminal wrongdoing on the part of the TNC;
- The TNC has fulfilled all of its obligations under this section with respect to the TNC driver; and
- The TNC is not the owner or bailee of the motor vehicle that caused harm to persons or property.

Luxury Ground TNCs

The bill excludes a TNC vehicle and a motor vehicle compliant with the Americans with Disabilities Act which is owned and used by a company that uses a digital network to facilitate prearranged rides to persons with disabilities for compensation from the definition of "for-hire vehicle in s. 320.01, F.S. It includes a for-hire vehicle in the definitions of the definitions of the terms "prearranged ride" and "transportation network company" or "TNC" in s. 627.748, F.S.

[40] The standard is a Department of Defense test method for considering the influences that environmental stresses have on materiel throughout all phases of its service life. *See* EverySpec for additional information, available at http://everyspec.com/MIL-STD/MIL-STD-0800-0899/MIL-STD-810G_12306/ (last visited February 4, 2020).

The bill also allows a motor vehicle compliant with the Americans with Disabilities Act which is owned and used by a company that uses a digital network to facilitate prearranged rides to persons with disabilities for compensation to be used as a TNC vehicle.

The bill creates s. 627.748(16), F.S., defining the term "luxury ground transportation network company" or "luxury ground TNC" to mean a company that:

- Meets the requirements relating to electing to be regulated as a luxury ground TNC, and
- Uses its digital network to connect riders exclusively to drivers who operate for-hire vehicles, including limousines and luxury sedans and excluding taxicabs.

The bill authorizes an entity to elect, upon written notification to the Department of Financial Services (department), to be regulated as a luxury ground TNC. The bill requires a luxury ground TNC to:

- Comply with all of the requirements of s. 627.748, F.S., applicable to TNCs which do not conflict with insurance coverage requirements or which prohibit the company from connecting riders to drivers who operate for-hire vehicles, including limousines and luxury sedans and excluding taxicabs; and
- Maintain at all times insurance coverage at the levels at least equal to the greater of those required in this section and those required of for-hire vehicles, regardless of whether the driver is operating as a for-hire vehicle driver of luxury ground TNC driver.

However, a prospective luxury ground TNC that satisfies minimum financial responsibility at the time of written notification to the department through compliance by using self-insurance may continue to use self-insurance to satisfy the requirements of this subparagraph.

When a TNC driver is logged on to the digital network but is *not* engaged in a prearranged ride, the required coverage is primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage, plus PIP benefits (excluding limousines) and uninsured and underinsured motorist coverage. When a TNC driver *is* engaged in a prearranged ride, the vehicle insurance must provide primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage, plus PIP benefits (excluding limousines) and uninsured and underinsured motorist coverage. For-hire passenger transportation vehicles are generally required to carry coverage with limits of $125,000/$250,000 for bodily injury and $50,000 for property damage.

Lastly, the bill includes luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles in the existing provisions relating to preemption to the state of regulation of TNCs, TNC drivers, and TNC vehicles. Regulation of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles are preempted to the state.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, subsection (b) of section 18 of the Florida Constitution provides that, except upon approval of each house of the Legislature by two-thirds of the membership, the

Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. As noted, some local governments are currently regulating for-hire vehicles and are collecting revenues for items such as business licenses or operating permits, driver registrations, and vehicle inspections. The extent of such regulation and the reduction of revenue collection in the aggregate is indeterminate. If the mandate restriction applies, the bill would need approval of the Legislature by a two-thirds vote of its membership.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The prohibition against display of advertisements on a TNC DAD for advertisements that, for example, include nudity, violent images, or disparaging or false advertisements could raise First Amendment issues, as the prohibition regulates the content of advertising. However, the outcome of any such claim is unknown.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

To the extent that local governments currently collect revenue from regulation of digital advertising on vehicles, or fees from regulation of limousines and luxury sedans, that revenue will be negatively impacted. However, the extent of any impact is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.748 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 Innovation, Industry, and Technology on February 10, 2020:
The committee substitute:

- Exempts a Transportation Network Company (TNC) vehicle from the definition of "for-hire vehicle" in s. 320.01, F.S.;
- Limits the height of a digital advertising device to twenty inches total, not twenty exclusive of the attachment device;
- Allows a motor vehicle compliant with the ADA owned by a digital network company to be used as a TNC;
- Allows the TNC vehicle owner to provide automobile insurance;
- Changes the standard for the device from "must meet the requirements of the MIL-STD-810G standard" to "at a minimum, meet the requirements of the MIL-STD-810G standard or other reasonable environmental and safety industry standard;"
- Subjects all advertisements displayed on a TNC digital advertising device to the Florida Deceptive and Unfair Trade Practices Act, with a TNC driver immune from liability for the display of an advertisement that violates this section or the Florida Deceptive and Unfair Trade Practices Act unless the TNC driver is the advertiser, and with the owner or operator of a TNC digital advertising device that displays an advertisement that is in violation of this section or the Florida Deceptive and Unfair Trade Practices Act immune from liability for the violation if the advertisement was displayed in good faith and without actual knowledge of the violation, unless the advertiser is the same person as the owner or operator;
- Deletes the requirement that the company operating TNC digital advertising device allocate 10 percent of all advertising to government, not-for-profit, or charitable organizations at no cost;
- Changes the insurance requirement from the greater of those required in s. 627.748, F.S., and those required of for-hire vehicles, to that required in s. 627.748, F.S.; and
- Exempts a TNC from liability for harm to persons or property that results or arises out of the use, operation, or possession of a motor vehicle operating as a TNC vehicle while the driver is logged on to the digital network under specified circumstances.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/11/2020	.	
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The Committee on Innovation, Industry, and Technology (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present paragraphs (f) and (g) of subsection (1), present subsections (11) through (14), and present subsection (15) of section 627.748, Florida Statutes, are redesignated as paragraphs (g) and (h) of subsection (1), subsections (12) through (15), and subsection (17), respectively, paragraphs (b) and (e) and present paragraph (g)

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of subsection (1), subsection (2), paragraphs (b) and (c) of subsection (7), and paragraph (a) of present subsection (15) are amended, a new paragraph (f) is added to subsection (1), and a new subsection (11) and subsection (16) are added to that section, to read:

627.748 Transportation network companies.—

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

(b) "Prearranged ride" means the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle. The term does not include a taxicab~~, for-hire vehicle,~~ or street hail service and does not include ridesharing as defined in s. 341.031, carpool as defined in s. 450.28, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

(e) "Transportation network company" or "TNC" means an entity operating in this state pursuant to this section using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association ~~or for-hire vehicle owner~~. An individual, corporation, partnership, sole proprietorship, or other entity that arranges medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care

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organization is not a TNC. This section does not prohibit a TNC from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of this section.

(f) "Transportation network company digital advertising device" or "TNC digital advertising device" means a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle and that displays advertisements on a digital screen only when the TNC vehicle is turned on.

(h) ~~(g)~~ "Transportation network company vehicle" or "TNC vehicle" means a vehicle that is not a taxicab or~~,~~ jitney~~, limousine, or for-hire vehicle as defined in s. 320.01(15)~~ and that is:

1. Used by a TNC driver to offer or provide a prearranged ride; and

2. Owned, leased, or otherwise authorized to be used by the TNC driver.

Notwithstanding any other provision of law, a vehicle that is let or rented to another for consideration may be used as a TNC vehicle.

(2) NOT OTHER CARRIERS.—A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab ~~or for-hire vehicle~~ service. In addition, a TNC driver is not required to register the vehicle that the TNC driver uses to provide prearranged rides as a commercial motor vehicle ~~or a for-hire vehicle~~.

(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE REQUIREMENTS.—

(b) The following automobile insurance requirements apply while a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(c) The following automobile insurance requirements apply while a TNC driver is engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

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2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(11) TRANSPORTATION NETWORK COMPANY DIGITAL ADVERTISING DEVICE.—

(a) A TNC driver or his or her designee may contract with a company to install a TNC digital advertising device on a TNC vehicle.

(b) A TNC digital advertising device may be enabled with cellular or WiFi-enabled data transmission and equipped with GPS.

(c) A TNC digital advertising device may display advertisements only when the TNC vehicle is turned on.

(d) A TNC digital advertising device must follow the lighting requirements of s. 316.2397.

(e) No portion of the TNC digital advertising device may extend beyond the front or rear windshield of the vehicle, nor may it impact the TNC driver’s vision.

(f) A TNC digital advertising device must display advertisements only to the sides of the vehicle and not to the front or rear of the vehicle. Identification of the provider does not constitute advertising under this paragraph.

(g) A TNC digital advertising device must, at a minimum, meet the requirements of the MIL-STD-810G standard or other reasonable environmental and safety industry standard, as determined through independent safety and durability testing

under the review of a licensed professional engineer, before being installed on a TNC vehicle.

(h) A TNC digital advertising device may not display advertisements for illegal products or services or advertisements that include nudity or violent images. All advertisements displayed on a TNC digital advertising device are subject to the Florida Deceptive and Unfair Trade Practices Act.

(i)1. A TNC driver is immune from liability for the display of an advertisement that violates this section or the Florida Deceptive and Unfair Trade Practices Act unless the TNC driver is the advertiser.

2. The owner or operator of a TNC digital advertising device that displays an advertisement that is in violation of this section or the Florida Deceptive and Unfair Trade Practices Act is immune from liability under this section and the Florida Deceptive and Unfair Trade Practices Act for the violation if the advertisement was displayed in good faith and without actual knowledge of the violation, unless the advertiser is the same person as the owner or operator.

(j) For the purposes of this chapter, a TNC advertising device shall be deemed part of a TNC vehicle.

(16) LUXURY GROUND TRANSPORTATION NETWORK COMPANIES.—

(a) As used in this subsection, the term "luxury ground transportation network company" or "luxury ground TNC" means a company that:

1. Meets the requirements of paragraph (b).

2. Notwithstanding other provisions of this section, uses a digital network to connect riders exclusively to drivers who operate for-hire vehicles as defined in s. 320.01(15), including

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limousines and luxury sedans and excluding taxicabs.

(b) An entity may elect, upon written notification to the department, to be regulated as a luxury ground TNC. A luxury ground TNC must:

1. Comply with all of the requirements of this section applicable to a TNC, including subsection (17), that do not conflict with subparagraph 2. or that do not prohibit the company from connecting riders to drivers who operate for-hire vehicles as defined in 320.01(15), including limousines and luxury sedans and excluding taxicabs.

2. Maintain insurance coverage required in this section when the luxury ground TNC driver is logged on to a digital network or while the luxury ground TNC driver is engaged in a prearranged ride. However, a prospective luxury ground TNC that satisfies minimum financial responsibility at the time of written notification to the department through compliance with s. 324.032(2) by using self-insurance may continue to use self-insurance to satisfy the requirements of this subparagraph.

(17) ~~(15)~~ PREEMPTION.—

(a) It is the intent of the Legislature to provide for uniformity of laws governing TNCs, TNC drivers, ~~and~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles throughout the state. TNCs, TNC drivers, ~~and~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles are governed exclusively by state law, including in any locality or other jurisdiction that enacted a law or created rules governing TNCs, TNC drivers, ~~or~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, or luxury ground TNC vehicles before July 1, 2017. A county,

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municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

1. Impose a tax on, or require a license for, a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle if such tax or license relates to providing prearranged rides;

2. Subject a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or

3. Require a TNC, ~~or~~ a TNC driver, a luxury ground TNC, or a luxury ground TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.

Section 2. This act shall take effect upon becoming a law.

========== 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 transportation network companies; amending s. 627.748, F.S.; revising and providing definitions; deleting for-hire vehicles from the list of vehicles that are not considered TNC carriers or are not exempt from certain registration; providing


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that TNC vehicle owners may maintain required insurance coverages; authorizing TNC drivers or their designees to contract with companies to install TNC digital advertising devices on TNC vehicles; providing requirements and restrictions for such devices; providing immunity from certain liability for TNC drivers and owners and operators of TNC digital advertising devices; providing exceptions; providing construction; authorizing entities to elect to be regulated as luxury ground TNCs by notifying the Department of Financial Services; providing requirements for luxury ground TNCs; providing for preemption over local law on the governance of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
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The Committee on Innovation, Industry, and Technology (Brandes) recommended the following:

Senate Substitute for Amendment (817654) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (15) of section 320.01, Florida Statutes, is amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(15)

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(b) The following are not included in the term "for-hire vehicle": a motor vehicle used for transporting school children to and from school under contract with school officials; a hearse or ambulance when operated by a licensed embalmer or mortician or his or her agent or employee in this state; a motor vehicle used in the transportation of agricultural or horticultural products or in transporting agricultural or horticultural supplies direct to growers or the consumers of such supplies or to associations of such growers or consumers; a motor vehicle temporarily used by a farmer for the transportation of agricultural or horticultural products from any farm or grove to a packinghouse or to a point of shipment by a transportation company; ~~or~~ a motor vehicle not exceeding 1 1/2 tons under contract with the Government of the United States to carry United States mail, provided such vehicle is not used for commercial purposes; a TNC vehicle as defined in s. 627.748(1); or a motor vehicle compliant with the Americans with Disabilities Act which is owned and used by a company that uses a digital network to facilitate prearranged rides to persons with disabilities for compensation.

Section 2. Present paragraphs (f) and (g) of subsection (1), present subsections (11) through (14), and present subsection (15) of section 627.748, Florida Statutes, are redesignated as paragraphs (g) and (h) of subsection (1), subsections (12) through (15), and subsection (17), respectively, a new paragraph (f) is added to subsection (1) and a new subsection (11) and subsections (16) and (18) are added to that section, and paragraphs (b) and (e) and present paragraph (g) of subsection (1), subsection (2), paragraphs (b) and (c) of

subsection (7), and paragraph (a) of present subsection (15) of that section are amended, to read:

627.748 Transportation network companies.—

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

(b) "Prearranged ride" means the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle. The term does not include a taxicab~~, for-hire vehicle,~~ or street hail service and does not include ridesharing as defined in s. 341.031, carpool as defined in s. 450.28, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

(e) "Transportation network company" or "TNC" means an entity operating in this state pursuant to this section using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association ~~or for-hire vehicle owner~~. An individual, corporation, partnership, sole proprietorship, or other entity that arranges medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization is not a TNC. This section does not prohibit a TNC from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of this

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section.

(f) "Transportation network company digital advertising device" or "TNC digital advertising device" means a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle and that displays advertisements on a digital screen only when the TNC vehicle is turned on.

(h) ~~(g)~~ "Transportation network company vehicle" or "TNC vehicle" means a vehicle that is not a taxicab or~~,~~ jitney~~, limousine, or for-hire vehicle as defined in s. 320.01(15)~~ and that is:

1. Used by a TNC driver to offer or provide a prearranged ride; and

2. Owned, leased, or otherwise authorized to be used by the TNC driver.

Notwithstanding any other ~~provision of~~ law, a vehicle that is let or rented to another for consideration, or a motor vehicle compliant with the Americans with Disabilities Act which is owned and used by a company that uses a digital network to facilitate prearranged rides to persons with disabilities for compensation, may be used as a TNC vehicle.

(2) NOT OTHER CARRIERS.—A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab ~~or for-hire vehicle~~ service. In addition, a TNC driver is not required to register the vehicle that the TNC driver uses to provide prearranged rides as a commercial motor vehicle ~~or a for-hire vehicle~~.

(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE REQUIREMENTS.—

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(b) The following automobile insurance requirements apply while a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(c) The following automobile insurance requirements apply while a TNC driver is engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

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2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(11) TRANSPORTATION NETWORK COMPANY DIGITAL ADVERTISING DEVICE.—

(a) A TNC driver or his or her designee may contract with a company to install a TNC digital advertising device on a TNC vehicle.

(b) A TNC digital advertising device may be enabled with cellular or WiFi-enabled data transmission and equipped with GPS.

(c) A TNC digital advertising device may display advertisements only when the TNC vehicle is turned on.

(d) A TNC digital advertising device must follow the lighting requirements of s. 316.2397.

(e) No portion of the TNC digital advertising device may extend beyond the front or rear windshield of the vehicle, nor may it impact the TNC driver’s vision.

(f) A TNC digital advertising device must display advertisements only to the sides of the vehicle and not to the front or rear of the vehicle. Identification of the provider does not constitute advertising under this paragraph.

(g) A TNC digital advertising device must, at a minimum, meet the requirements of the MIL-STD-810G standard or other reasonable environmental and safety industry standard, as determined through independent safety and durability testing

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under the review of a licensed professional engineer, before being installed on a TNC vehicle.

(h) A TNC digital advertising device may not display advertisements for illegal products or services or advertisements that include nudity or violent images. All advertisements displayed on a TNC digital advertising device are subject to the Florida Deceptive and Unfair Trade Practices Act.

(i)1. A TNC driver is immune from liability for the display of an advertisement that violates this section or the Florida Deceptive and Unfair Trade Practices Act unless the TNC driver is the advertiser.

2. The owner or operator of a TNC digital advertising device that displays an advertisement that is in violation of this section or the Florida Deceptive and Unfair Trade Practices Act is immune from liability under this section and the Florida Deceptive and Unfair Trade Practices Act for the violation if the advertisement was displayed in good faith and without actual knowledge of the violation, unless the advertiser is the same person as the owner or operator.

(j) For the purposes of this chapter, a TNC advertising device shall be deemed part of a TNC vehicle.

(16) LUXURY GROUND TRANSPORTATION NETWORK COMPANIES.—

(a) As used in this section, the term "luxury ground transportation network company" or "luxury ground TNC" means a company that:

1. Meets the requirements of paragraph (b).

2. Notwithstanding other provisions of this section, uses a digital network to connect riders exclusively to drivers who operate for-hire vehicles as defined in s. 320.01(15), including

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limousines and luxury sedans and excluding taxicabs.

(b) An entity may elect, upon written notification to the department, to be regulated as a luxury ground TNC. A luxury ground TNC must:

1. Comply with all of the requirements of this section applicable to a TNC, including subsection (17), which do not conflict with subparagraph 2. or which do not prohibit the company from connecting riders to drivers who operate for-hire vehicles as defined in 320.01(15), including limousines and luxury sedans and excluding taxicabs.

2. Maintain insurance coverage required in this section when the luxury ground TNC driver is logged on to a digital network or while the luxury ground TNC driver is engaged in a prearranged ride. However, a prospective luxury ground TNC that satisfies minimum financial responsibility at the time of written notification to the department through compliance with s. 324.032(2) by using self-insurance may continue to use self-insurance to satisfy the requirements of this subparagraph.

(17) ~~(15)~~ PREEMPTION.—

(a) It is the intent of the Legislature to provide for uniformity of laws governing TNCs, TNC drivers, ~~and~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles throughout the state. TNCs, TNC drivers, ~~and~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles are governed exclusively by state law, including in any locality or other jurisdiction that enacted a law or created rules governing TNCs, TNC drivers, ~~or~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, or luxury ground TNC vehicles before July 1, 2017. A county,

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municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

1. Impose a tax on, or require a license for, a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle if such tax or license relates to providing prearranged rides;

2. Subject a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or

3. Require a TNC, ~~or~~ a TNC driver, a luxury ground TNC, or a luxury ground TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.

(18) LIABILITY.—

(a) A TNC shall not be liable by reason of owning, operating, or maintaining the digital network accessed by a TNC driver or rider, or by being the TNC affiliated with a TNC driver, for harm to persons or property which results or arises out of the use, operation, or possession of a motor vehicle operating as a TNC vehicle while the driver is logged on to the digital network if:

1. There is no negligence or criminal wrongdoing on the part of the TNC; and

2. The TNC has fulfilled all of its obligations under this section with respect to the TNC driver.

(b) This subsection does not alter or reduce the required insurance coverages or policy limits under subsection (7).

Section 3. This act shall take effect upon becoming a law.

================ 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 transportation companies; amending s. 320.01, F.S.; revising the definition of the term "for-hire vehicle" to exclude transportation network company (TNC) vehicles and certain motor vehicles used for prearranged rides for persons with disabilities for compensation; amending s. 627.748, F.S.; revising and providing definitions; deleting for-hire vehicles from the list of vehicles that are not considered TNC carriers or are not exempt from certain registration; providing that TNC vehicle owners may maintain required insurance coverages; authorizing TNC drivers or their designees to contract with companies to install TNC digital advertising devices on TNC vehicles; providing requirements and restrictions for such devices; providing immunity from certain liability for TNC drivers and owners and operators of TNC digital advertising devices; providing exceptions; providing construction relating to such devices; authorizing entities to elect to be regulated as luxury ground TNCs by notifying the Department of


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Financial Services; providing requirements for luxury ground TNCs; providing for preemption over local law on the governance of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles; providing that TNCs are not liable for certain harm to persons or property if certain conditions are met; providing construction relating to insurance coverage; providing an effective date.

184186

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
	.	
	.	
	.	

The Committee on Innovation, Industry, and Technology (Farmer) recommended the following:

Senate Amendment to Substitute Amendment (506848)

Delete lines 231 - 244
and insert:
(18) LIABILITY.—
(a) A TNC shall not be liable under the law of this state by reason of owning, operating, or maintaining the digital network accessed by a TNC driver or rider, or by being the TNC affiliated with a TNC driver, for harm to persons or property that results or arises out of the use, operation, or possession

184186

of a motor vehicle operating as a TNC vehicle while the driver is logged on to the digital network if:

1. There is no negligence or criminal wrongdoing on the part of the TNC;

2. The TNC has fulfilled all of its obligations under this section with respect to the TNC driver; and

3. The TNC is not the owner or bailee of the motor vehicle that caused harm to persons or property.

(b) This subsection does not alter or reduce the required insurance coverages or policy limits under subsection (7) or the liability of any person under any other legal theory.

The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson
Committee on Innovation, Industry, and Technology

Subject: Committee Agenda Request

Date: January 28, 2020

I respectfully request that **Senate Bill #1352**, relating to **Transportation Companies**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.10.20
Meeting Date

SB 1352
Bill Number (if applicable)

Topic TRANSPORTATION COMPANIES

Amendment Barcode (if applicable)

Name MEGAN SIRIANE SAMPLES

Job Title PUBLIC POLICY MANAGER, SOUTHEAST

Address _____
Street

_____
City *State* *Zip*

Phone 561.352.3388

Email MEGANSS@LYFT.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing LYFT

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)

2/10/2020
Meeting Date

1352
Bill Number (if applicable)

Topic TRANSPORTATION COMPANIES

Amendment Barcode (if applicable)

Name DAVID RAMBA

Job Title

Address 120 S. MONROE ST
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850 727 7087

Email david@ramba law.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA LIMOUSINE 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

COMMITTEE VOTE RECORD

COMMITTEE: Innovation, Industry, and Technology
ITEM: SB 1352
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Monday, February 10, 2020
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Building

FINAL VOTE			2/10/2020 1 Amendment 817654 Brandes		2/10/2020 2 Consider late-filed AM 506848 (2/3 vote required) Brandes		2/10/2020 3 Amendment 506848 (Pending) Brandes	
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Bracy						
X		Bradley						
X		Brandes						
X		Braynon						
X		Farmer						
	X	Gibson						
X		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
9	1	**TOTALS**	-	RS	FAV	-	PEND	-
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Innovation, Industry, and Technology
ITEM: SB 1352
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Monday, February 10, 2020
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Building

	2/10/2020 4 Consider late-filed AM 184186 (2/3 vote required) Farmer		2/10/2020 5 Amendment 184186 Farmer		2/10/2020 6 Amendment 506848 as amended Brandes			
SENATORS	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
Bracy								
Bradley								
Brandes								
Braynon								
Farmer								
Gibson								
Hutson								
Passidomo								
Benacquisto, VICE CHAIR								
Simpson, CHAIR								
TOTALS	FAV	-	RCS	-	RCS	-		
	Yea	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
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-R=Reconsidered
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WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By the Committee on Innovation, Industry, and Technology; and Senator Brandes

580-03374-20 20201352c1

A bill to be entitled

An act relating to transportation companies; amending s. 320.01, F.S.; revising the definition of the term "for-hire vehicle" to exclude transportation network company (TNC) vehicles and certain motor vehicles used for prearranged rides for persons with disabilities for compensation; amending s. 627.748, F.S.; revising and providing definitions; deleting for-hire vehicles from the list of vehicles that are not considered TNC carriers or are not exempt from certain registration; providing that TNC vehicle owners may maintain required insurance coverages; authorizing TNC drivers or their designees to contract with companies to install TNC digital advertising devices on TNC vehicles; providing requirements and restrictions for such devices; providing immunity from certain liability for TNC drivers and owners and operators of TNC digital advertising devices; providing exceptions; providing construction relating to such devices; authorizing entities to elect to be regulated as luxury ground TNCs by notifying the Department of Financial Services; providing requirements for luxury ground TNCs; providing for preemption over local law on the governance of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles; providing that TNCs are not liable for certain harm to persons or property if certain conditions are met; providing construction relating to insurance coverage and liability; providing an effective date.

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

Section 1. Paragraph (b) of subsection (15) of section 320.01, Florida Statutes, is amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(15)

(b) The following are not included in the term "for-hire vehicle": a motor vehicle used for transporting school children to and from school under contract with school officials; a hearse or ambulance when operated by a licensed embalmer or mortician or his or her agent or employee in this state; a motor vehicle used in the transportation of agricultural or horticultural products or in transporting agricultural or horticultural supplies direct to growers or the consumers of such supplies or to associations of such growers or consumers; a motor vehicle temporarily used by a farmer for the transportation of agricultural or horticultural products from any farm or grove to a packinghouse or to a point of shipment by a transportation company; ~~or~~ a motor vehicle not exceeding 1 1/2 tons under contract with the Government of the United States to carry United States mail, provided such vehicle is not used for commercial purposes; a TNC vehicle as defined in s. 627.748(1); or a motor vehicle compliant with the Americans with Disabilities Act which is owned and used by a company that uses a digital network to facilitate prearranged rides to persons with disabilities for compensation.

Section 2. Present paragraphs (f) and (g) of subsection

(1), present subsections (11) through (14), and present subsection (15) of section 627.748, Florida Statutes, are redesignated as paragraphs (g) and (h) of subsection (1), subsections (12) through (15), and subsection (17), respectively, a new paragraph (f) is added to subsection (1) and a new subsection (11) and subsections (16) and (18) are added to that section, and paragraphs (b) and (e) and present paragraph (g) of subsection (1), subsection (2), paragraphs (b) and (c) of subsection (7), and paragraph (a) of present subsection (15) of that section are amended, to read:

627.748 Transportation network companies.—

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

(b) "Prearranged ride" means the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle. The term does not include a taxicab~~, for-hire vehicle,~~ or street hail service and does not include ridesharing as defined in s. 341.031, carpool as defined in s. 450.28, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

(e) "Transportation network company" or "TNC" means an entity operating in this state pursuant to this section using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written

contract, and is not a taxicab association ~~or for-hire vehicle owner~~. An individual, corporation, partnership, sole proprietorship, or other entity that arranges medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization is not a TNC. This section does not prohibit a TNC from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of this section.

(f) "Transportation network company digital advertising device" or "TNC digital advertising device" means a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle and that displays advertisements on a digital screen only when the TNC vehicle is turned on.

(h) ~~(g)~~ "Transportation network company vehicle" or "TNC vehicle" means a vehicle that is not a taxicab or~~,~~ jitney~~, limousine, or for-hire vehicle as defined in s. 320.01(15)~~ and that is:

1. Used by a TNC driver to offer or provide a prearranged ride; and

2. Owned, leased, or otherwise authorized to be used by the TNC driver.

Notwithstanding any other ~~provision of~~ law, a vehicle that is let or rented to another for consideration, or a motor vehicle compliant with the Americans with Disabilities Act which is owned and used by a company that uses a digital network to facilitate prearranged rides to persons with disabilities for compensation, may be used as a TNC vehicle.

(2) NOT OTHER CARRIERS.—A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab ~~or for-hire vehicle~~ service. In addition, a TNC driver is not required to register the vehicle that the TNC driver uses to provide prearranged rides as a commercial motor vehicle ~~or a for-hire vehicle~~.

(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE REQUIREMENTS.—

(b) The following automobile insurance requirements apply while a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver <u>or the TNC vehicle owner</u>;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(c) The following automobile insurance requirements apply while a TNC driver is engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(11) TRANSPORTATION NETWORK COMPANY DIGITAL ADVERTISING DEVICE.—

(a) A TNC driver or his or her designee may contract with a company to install a TNC digital advertising device on a TNC vehicle.

(b) A TNC digital advertising device may be enabled with cellular or WiFi-enabled data transmission and equipped with GPS.

(c) A TNC digital advertising device may display advertisements only when the TNC vehicle is turned on.

(d) A TNC digital advertising device must follow the lighting requirements of s. 316.2397.

(e) No portion of the TNC digital advertising device may extend beyond the front or rear windshield of the vehicle, nor may it impact the TNC driver’s vision.

(f) A TNC digital advertising device must display advertisements only to the sides of the vehicle and not to the front or rear of the vehicle. Identification of the provider does not constitute advertising under this paragraph.

(g) A TNC digital advertising device must, at a minimum, meet the requirements of the MIL-STD-810G standard or other reasonable environmental and safety industry standard, as determined through independent safety and durability testing under the review of a licensed professional engineer, before being installed on a TNC vehicle.

(h) A TNC digital advertising device may not display advertisements for illegal products or services or advertisements that include nudity or violent images. All advertisements displayed on a TNC digital advertising device are subject to the Florida Deceptive and Unfair Trade Practices Act.

(i)1. A TNC driver is immune from liability for the display of an advertisement that violates this section or the Florida Deceptive and Unfair Trade Practices Act unless the TNC driver is the advertiser.

2. The owner or operator of a TNC digital advertising device that displays an advertisement that is in violation of this section or the Florida Deceptive and Unfair Trade Practices Act is immune from liability under this section and the Florida Deceptive and Unfair Trade Practices Act for the violation if the advertisement was displayed in good faith and without actual knowledge of the violation, unless the advertiser is the same person as the owner or operator.

(j) For the purposes of this chapter, a TNC advertising device shall be deemed part of a TNC vehicle.

(16) LUXURY GROUND TRANSPORTATION NETWORK COMPANIES.—

(a) As used in this section, the term "luxury ground transportation network company" or "luxury ground TNC" means a company that:

1. Meets the requirements of paragraph (b).

2. Notwithstanding other provisions of this section, uses a digital network to connect riders exclusively to drivers who operate for-hire vehicles as defined in s. 320.01(15), including limousines and luxury sedans and excluding taxicabs.

(b) An entity may elect, upon written notification to the department, to be regulated as a luxury ground TNC. A luxury ground TNC must:

1. Comply with all of the requirements of this section applicable to a TNC, including subsection (17), which do not conflict with subparagraph 2. or which do not prohibit the company from connecting riders to drivers who operate for-hire vehicles as defined in 320.01(15), including limousines and luxury sedans and excluding taxicabs.

2. Maintain insurance coverage required in this section when the luxury ground TNC driver is logged on to a digital network or while the luxury ground TNC driver is engaged in a prearranged ride. However, a prospective luxury ground TNC that satisfies minimum financial responsibility at the time of written notification to the department through compliance with s. 324.032(2) by using self-insurance may continue to use self-insurance to satisfy the requirements of this subparagraph.

(17) ~~(15)~~ PREEMPTION.—

(a) It is the intent of the Legislature to provide for uniformity of laws governing TNCs, TNC drivers, ~~and~~ TNC

vehicles, luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles throughout the state. TNCs, TNC drivers, ~~and~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles are governed exclusively by state law, including in any locality or other jurisdiction that enacted a law or created rules governing TNCs, TNC drivers, ~~or~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, or luxury ground TNC vehicles before July 1, 2017. A county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

1. Impose a tax on, or require a license for, a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle if such tax or license relates to providing prearranged rides;

2. Subject a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or

3. Require a TNC, ~~or~~ a TNC driver, a luxury ground TNC, or a luxury ground TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.

(18) LIABILITY.—

(a) A TNC shall not be liable under the law of this state by reason of owning, operating, or maintaining the digital network accessed by a TNC driver or rider, or by being the TNC

affiliated with a TNC driver, for harm to persons or property that results or arises out of the use, operation, or possession of a motor vehicle operating as a TNC vehicle while the driver is logged on to the digital network if:

1. There is no negligence or criminal wrongdoing on the part of the TNC;

2. The TNC has fulfilled all of its obligations under this section with respect to the TNC driver; and

3. The TNC is not the owner or bailee of the motor vehicle that caused harm to persons or property.

(b) This subsection does not alter or reduce the required insurance coverages or policy limits under subsection (7) or the liability of any person under any other legal theory.

Section 3. This act shall take effect upon becoming a law.

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 Innovation, Industry, and Technology

BILL:	CS/SB 1870
INTRODUCER:	Innovation, Industry, and Technology Committee and Senators Hutson and Cruz
SUBJECT:	Technological Development
DATE:	February 11, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle/Baird	Imhof	IT	**Fav/CS**
2.			BI	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1870 abolishes the Division of State Technology within the Department of Management Services (DMS), replacing it with the Florida Digital Service, which is to create innovative solutions that securely modernize state government, achieve value through digital transformation and interoperability, and fully support the cloud-first policy. The Florida Digital Service is to develop a comprehensive enterprise architecture that: recognizes the unique needs of those included within the enterprise, supports the cloud-first policy, and addresses how information technology infrastructure may be modernized to achieve cloud-first objectives. "Enterprise" means state agencies, including the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Financial Services, and the judicial branch.

The bill creates the Enterprise Architecture Advisory Council within DMS to meet at least semiannually to discuss implementation, management, and coordination of the enterprise architecture; identify potential issues and threats with specific use cases; and recommend proactive solutions.

The bill creates, effective January 1, 2021, the Financial Technology Sandbox within the Office of Financial Regulation to allow financial technology innovators to test new products and services in a supervised, flexible regulatory sandbox using exceptions of specified general law and waivers of the corresponding rule requirements under defined conditions. It provides that the creation of a supervised, flexible regulatory sandbox provides a welcoming business

environment for technology innovators and may lead to significant business growth.

Except as otherwise provided (the sandbox provisions), the bill takes effect July 1, 2020.

II. Present Situation:

Department of Management Services (DMS)

Information Technology (IT) Management

DMS[1] oversees IT[2] governance and security for the executive branch of state government. The Division of State Technology (DST), a subdivision of DMS subject to its control and supervision, implements DMS's duties and policies in this area.[3] The head of DST is appointed by the Secretary of Management Services[4] and serves as the state chief information officer (CIO).[5] The CIO must be a proven effective administrator with at least 10 years of executive level experience in the public or private sector.[6] DST "provides the State with guidance and strategic direction on a variety of transformational technologies, such as cybersecurity and data analytics, while also providing the following critical services: voice, data, software, and much more."[7] The duties and responsibilities of DMS and DST include:

- Developing IT policy for the management of the state's IT resources;
- Establishing IT architecture standards and assisting state agencies[8] in complying with those standards;
- Establishing project management and oversight standards with which state agencies must comply when implementing IT projects. The standards must include:
  - Performance measurements and metrics that reflect the status of an IT project based on a defined and documented project scope, cost, and schedule;
  - Methodologies for calculating acceptable variances in the projected versus actual scope, schedule, or cost of an IT project; and
  - Reporting requirements
- Performing project oversight of all state agency IT projects that have a total cost of $10 million or more, as well as cabinet agency IT projects that have a total cost of $25 million or more, and are funded in the General Appropriations Act or any other law;
- Recommending potential methods for standardizing data across state agencies which will promote interoperability and reduce the collection of duplicative data;

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[1] Section 20.22, F.S.
[2] The term "information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. s. 282.0041(14), F.S.
[3] Section 20.22(2)(a), F.S.
[4] The Secretary of Management Services serves as the head of DMS and is appointed by the Governor, subject to confirmation by the Senate. s. 20.22(1), F.S.
[5] Section 20.22(2)(b), F.S.
[6] *Id.*
[7] *State Technology*, FLORIDA DEPARTMENT OF MANAGEMENT SERVICES, https://www.dms.myflorida.com/business_operations/state_technology (last visited Jan. 27, 2020).
[8] *See* s. 282.0041(27), F.S.

- Recommending open data[9] technical standards and terminologies for use by state agencies;
- Establishing best practices for the procurement of IT products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services; and
- Establishing a policy for all IT-related state contracts, including state term contracts for IT commodities, consultant services, and staff augmentation services.[10]

State Data Center and the Cloud-First Policy

In 2008, the Legislature created the State Data Center (SDC) system, established two primary data centers,[11] and required that agency data centers be consolidated into the primary data centers by 2019.[12] Data center consolidation was completed in FY 2013-14. In 2014, the two primary data centers were merged in law to create the SDC within then-existing Agency for State Technology.[13] The SDC is established within DMS and DMS is required to provide operational management and oversight of the SDC.[14]

The SDC relies heavily on the use of state-owned equipment installed at the SDC facility located in the state's Capital Circle Office Center in Tallahassee for the provision of data center services. The SDC is led by the director of the SDC.[15] The SDC is required to do the following:

- Offer, develop, and support the services and applications defined in service-level agreements executed with its customer entities;[16]
- Maintain performance of the state data center by ensuring proper data backup, data backup recovery, disaster recovery, and appropriate security, power, cooling, fire suppression, and capacity;
- Develop and implement business continuity and disaster recovery plans, and annually conduct a live exercise of each plan;
- Enter into a service-level agreement with each customer entity to provide the required type and level of service or services;
- Assume administrative access rights to resources and equipment, including servers, network components, and other devices, consolidated into the SDC;
- Show preference, in its procurement process, for cloud-computing solutions that minimize or do not require the purchasing, financing, or leasing of SDC infrastructure, and that meet the needs of customer agencies, reduce costs, and that meet or exceed the applicable state and federal laws, regulations, and standards for IT security; and
- Assist customer entities in transitioning from state data center services to third-party cloud-computing services procured by a customer entity.

[9] The term "open data" means data collected or created by a state agency and structured in a way that enables the data to be fully discoverable and usable by the public. The term does not include data that are restricted from public distribution based on federal or state privacy, confidentiality, and security laws and regulations or data for which a state agency is statutorily authorized to assess a fee for its distribution. S. 282.0041(18), F.S.
[10] S. 282.0051, F.S.
[11] The Northwood Shared Resource Center and the Southwood Shared Resource Center. Ss. 282.204-282.205, F.S. (2008).
[12] Ch. 2008-116, L.O.F.
[13] Ch. 2014-221, L.O.F.
[14] Section 282.201, F.S.
[15] Section 282.201, F.S.
[16] A "customer entity" means an entity that obtains services from DMS. s. 282.0041(7), F.S.

A state agency is prohibited, unless exempted[17] elsewhere in law, from:

- Creating a new agency computing facility or data center;
- Expanding the capability to support additional computer equipment in an existing agency computing facility or data center; or
- Terminating services with the SDC without giving written notice of intent to terminate 180 days before termination.[18]

Cloud computing is "a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g. networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction."[19] In 2019, the Legislature mandated that each agency adopt a cloud-first policy that first considers cloud computing solutions in its technology sourcing strategy for technology initiatives or upgrades whenever possible or feasible.[20] Each agency must, just like the SDC, show a preference for cloud-computing solutions in its procurement process and adopt formal procedures for the evaluation of cloud-computing options for existing applications, technology initiatives, or upgrades.[21]

IT Security

The IT Security Act[22] establishes requirements for the security of state data and IT resources.[23] DMS must designate a state chief information security officer (CISO) to oversee state IT security.[24] The CISO must have expertise in security and risk management for communications and IT resources.[25] DMS is tasked with the following duties regarding IT security:

- Establishing standards and processes consistent with generally accepted best practices for IT security, including cybersecurity;
- Adopting rules that safeguard an agency's data, information, and IT resources to ensure availability, confidentiality, and integrity and to mitigate risks;
- Developing, and annually updating, a statewide IT security strategic plan that includes security goals and objectives for the strategic issues of IT security policy, risk management, training, incident management, and disaster recovery planning including:
    - Identifying protection procedures to manage the protection of an agency's information, data, and IT resources;

[17] The following entities are exempt from the use of the SDC: the Department of Law Enforcement, the Department of the Lottery's Gaming Systems Design and Development in the Office of Policy and Budget, regional traffic management centers, the Office of Toll Operations of the Department of Transportation, the State Board of Administration, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, and the Florida Housing Finance Corporation. S. 282.201(2), F.S.
[18] Section 282.201(3), F.S.
[19] *Special Publication 800-145*, National Institute of Standards and Technology, https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf (last visited Jan. 27, 2020). The term "cloud computing" has the same meaning as provided in Special Publication 800-145 issued by the National Institute of Standards and Technology (NIST). s. 282.0041(5), F.S.
[20] Section 282.206(1), F.S.
[21] Section 282.206(2) & (3), F.S.
[22] Section 282.318, F.S., is cited as the "Information Technology Security Act."
[23] Section 282.318, F.S.
[24] Section 282.318(3), F.S.
[25] *Id.*

- Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes; and
- Recovering information and data in response to an IT security incident;
- Developing and publishing for use by state agencies an IT security framework; and
- Reviewing the strategic and operational IT security plans of executive branch agencies annually.[26]

The IT Security Act requires the heads of state agencies to designate an information security manager to administer the IT security program of the state agency.[27] In part, the heads of state agencies are also required to annually submit to DMS the state agency's strategic and operational IT security plans; conduct, and update every three years, a comprehensive risk assessment to determine the security threats to the data, information, and IT resources of the state agency; develop, and periodically update, written internal policies and procedures; and ensure that periodic internal audits and evaluations of the agency's IT security program for the data, information, and IT resources of the state agency are conducted.[28]

Enhanced 911 (E911) System

DST oversees the E911 system in Florida.[29] DST is required by law to develop, maintain, and implement the statewide emergency communications E911 system plan.[30] The plan must provide for:

- The public agency emergency communications requirements for each entity of local government[31] in the state.
- A system to meet specific local government requirements, which must include law enforcement, firefighting, and emergency medical services, and may include other emergency services such as poison control, suicide prevention, and emergency management services.
- Identification of the mutual aid agreements necessary to obtain an effective E911 system.
- A funding provision that identifies the cost to implement the E911 system.[32]

DST is responsible for implementing and coordinating the plan, and must adopt any necessary rules and schedules related to public agencies[33] implementing and coordinating the plan.[34]

The Secretary of Management Services, or his or her designee, is the director of the E911 system and also serves as chair of the E911 Board.[35] The director of the E911 system is authorized to

[26] Section 282.318(3), F.S.
[27] Section 282.318(4)(a), F.S.
[28] Section 282.318(4), F.S.
[29] Section 365.171, F.S. Prior to 2019, the Division of Telecommunications, established in statute as the Technology Program within DMS, was the entity with oversight over E911. *See* ch. 2019-118, L.O.F.
[30] Section 365.171(4), F.S.
[31] "Local government" means any city, county, or political subdivision of the state and its agencies. s. 365.171(3)(b), F.S.
[32] *Id.*
[33] "Public agency" means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services. s. 365.171(3)(c), F.S.
[34] Section 365.171(4), F.S.
[35] Section 365.172(5)(a), F.S.

coordinate the activities of the system with state, county, local, and private agencies.[36] The director must consult, cooperate, and coordinate with local law enforcement agencies.[37] An "E911 Board," composed of eleven members, is established in law to administer funds derived from fees imposed on each user of voice communications service with a Florida billing address (place of primary use).[38] The Governor appoints five members who are county 911 coordinators and five members from the telecommunications industry.[39] The E911 Board makes disbursements from the Emergency Communications Number E911 System Trust Fund to county governments and wireless providers.[40]

Agency Procurements

Agency[41] procurements of commodities or contractual services exceeding $35,000 are governed by statute and rule and require use of one of the following three types of competitive solicitations,[42] unless otherwise authorized by law:[43]

- Invitation to bid (ITB): An agency must use an ITB when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.[44]
- Request for proposals (RFP): An agency must use an RFP when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables.[45]
- Invitation to negotiate (ITN): An ITN is a solicitation used by an agency that is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.[46]

DMS is responsible for procuring state term contracts for commodities and contractual services from which state agencies must make purchases.[47]

Digital Driver License

Current law provides for the establishment of a digital proof of driver license. Specifically, the Department of Highway Safety and Motor Vehicles (DHSMV) is required to begin to review and

[36] Section 365.171(5), F.S.
[37] *Id.*
[38] Section 365.172(5), F.S.
[39] Section 365.172(5)(b), F.S.
[40] Section 365.172(5) & (6), F.S.
[41] Section 287.012(1), F.S., defines "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[42] Section 287.012(6), F.S., defines "competitive solicitation" as the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.
[43] *See* s. 287.057, F.S.
[44] Section 287.057(1)(a), F.S.
[45] Section 287.057(1)(b), F.S.
[46] Section 287.057(1)(c), F.S.
[47] Sections 287.042(2)(a) and 287.056(1), F.S.

prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license.[48] The statute authorizes DHSMV to contract with one or more private entities to develop a digital proof of driver license system.[49]

The digital proof of driver license developed by DHSMV or by an entity contracted by DHSMV must be in such a format as to allow law enforcement to verify the authenticity of the digital proof of driver license.[50] DHSMV may adopt rules to ensure valid authentication of digital driver licenses by law enforcement.[51] A person may not be issued a digital proof of driver license until he or she has satisfied all of the statutory requirements relating to the issuance of a physical driver license.[52]

Current law also establishes certain penalties for a person who manufacturers or possesses a false digital proof of driver license.[53] Specifically, a person who:

- Manufactures a false digital proof of driver license commits a felony of the third degree, punishable by up to five years in prison[54] and a fine not to exceed $5,000,[55] or punishable under the habitual felony offender statute.[56]
- Possesses a false digital proof of driver license commits a misdemeanor of the second degree, punishable by up to 60 days in prison[57] and a fine not to exceed $500.[58]

Regulation of Money Transmitters and Payment Instrument Sellers

State Regulation

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[59] The OFR's Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. Money transmitters and payment instrument sellers are two types of MSBs, and both are regulated under part II of ch. 560, F.S.

[48] Section 322.032(1), F.S.
[49] Section 322.032(2), F.S.
[50] *Id.*
[51] *Id.*
[52] Section 322.032(3), F.S.
[53] Section 322.032(4), F.S.
[54] Section 775.082, F.S.
[55] Section 775.083(1)(c), F.S.
[56] Section 775.084, F.S.
[57] Section 775.082, F.S.
[58] Section 775.083(1)(e), F.S.
[59] Section 20.121(3)(a)2., F.S.

A money transmitter "receives currency,[60] monetary value,[61] or payment instruments[62] for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country."[63] A payment instrument seller sells, issues, provides, or delivers a payment instrument.[64] State and federally chartered financial depository institutions, such as banks and credit unions, are exempt from licensure as an MSB.[65]

An applicant for licensure under ch. 560, F.S., must file an application together with an application fee of $375.[66] The license must be renewed every two years by paying a renewal fee of $750.[67] Money transmitters and payment instrument sellers may operate through authorized vendors by providing the OFR specified information about the authorized vendor any by paying a fee of $38 per authorized vendor location at the time of application and renewal.[68] A money transmitter or payment instrument seller may also engage in the activities authorized for check cashers[69] and foreign currency exchangers70 without paying additional licensing fees.[71]

A money transmitter or payment instrument seller must at all times:

- Have a net worth of at least $100,000 and an additional net worth of $10,000 per location in this state, up to a maximum of $2 million.[72]
- Have a corporate surety bond in an amount between $50,000 and $2 million depending on the financial condition, number of locations, and anticipated volume of the licensee.[73] In lieu of a corporate surety bond, the licensee may deposit collateral such as cash or interest-bearing stocks and bonds with a federally insured financial institution.[74]
- Possess permissible investments, such as cash and certificates of deposit, with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the United

[60] "Currency" means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. s. 560.103(11), F.S.
[61] "Monetary value" means a medium of exchange, whether or not redeemable in currency. s. 560.103(21), F.S.
[62] "Payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. s. 560.103(29), F.S.
[63] Section 560.103(23), F.S.
[64] Section 560.103(30) & (34); *supra* note 62.
[65] Section 560.104, F.S.
[66] Sections 560.141 & 560.143, F.S.
[67] *Id.*; s. 560.142, F.S.
[68] *Id.*; ss. 560.203, 560.205, & 560.208, F.S.
[69] "Check casher" means a person who sells currency in exchange for payment instruments received, except travelers checks. s. 560.103(6), F.S.
[70] "Foreign currency exchanger" means a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government. s. 560.103(17), F.S.
[71] Section 560.204(2), F.S.
[72] Section 560.209, F.S.
[73] *Id.*
[74] *Id.*

States.[75] The OFR may waive the permissible investments requirement if the dollar value of a licensee's outstanding payment instruments and money transmitted do not exceed the bond or collateral deposit.[76]

While MSBs are generally subject to federal anti-money laundering laws,[77] Florida law contains many of the same anti-money laundering reporting requirements and recordkeeping requirements with the added benefit of state enforcement. An MSB applicant must have an anti-money laundering program which meets the requirements of federal law.[78] Pursuant to the Florida Control of Money Laundering in Money Services Business Act, an MSB must maintain certain records of each transaction involving currency or payments instruments in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.[79] An MSB must keep records of each transaction occurring in this state which it knows to involve currency or other payment instruments having a greater value than $10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of ch. 896, F.S., or the Florida Control of Money Laundering in Money Services Business Act.[80] The OFR may take administrative action against an MSB for failure to maintain or produce documents required by ch. 560, F.S., or federal anti-money laundering laws.[81] The OFR may also take administrative action against an MSB for other violations of federal anti-money laundering laws such as failure to file suspicious activity reports.[82]

A money transmitter or payment instrument seller must maintain specified records for at least five years, including the following:[83]

- A daily record of payment instruments sold and money transmitted.
- A general ledger containing all asset, liability, capital, income, and expense accounts, which must be posted at least monthly.
- Daily settlement records received from authorized vendors.
- Monthly financial institution statements and reconciliation records.
- Records of outstanding payment instruments and money transmitted.
- Records of each payment instrument paid and money transmission delivered.
- A list of the names and addresses of all of the licensee's authorized vendors.
- Records that document the establishment, monitoring, and termination of relationships with authorized vendors and foreign affiliates.
- Any additional records, as prescribed by rule, designed to detect and prevent money laundering.

[75] Section 560.210, F.S.
[76] *Id.*
[77] 31 C.F.R. pt. 1022
[78] Section 560.1401, F.S.
[79] Section 560.123, F.S.
[80] *Id.*
[81] Section 560.114, F.S.
[82] *Id.*
[83] Sections 560.1105 & 560.211, F.S.

Federal Regulation

The Financial Crimes Enforcement Network of the U.S. Department of Treasury (FinCEN) serves as the nation's financial intelligence unit and is charged with safeguarding the U.S. financial system from the abuses of money laundering, terrorist financing, and other financial crimes.[84] The basic concept underlying FinCEN's core activities is "follow the money" because criminals leave financial trails as they try to launder the proceeds of crimes or attempt to spend their ill-gotten profits.[85] To that end, the FinCEN administers the Bank Secrecy Act (BSA).[86] The BSA regulations require banks and other financial institutions, including MSBs, to take a number of precautions against financial crime.[87] The BSA regulations require financial institutions to establish an anti-money laundering program (such as verifying customer identity), maintain certain records (such as transaction related data), and file reports (such as suspicious activity reports and currency transaction reports) that have been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations, as well as in certain intelligence and counter-terrorism matters.[88]

Generally, an MSB is required to register with FinCEN, regardless of whether the MSB is licensed with the state, if it conducts more than $1,000 in business with one person in one or more transactions on the same day, in one or more of the following services: money orders, traveler's checks, check cashing, currency dealing or exchange.[89] However, if a business provides money transfer services in any amount, it is required to be registered.[90]

FinCEN's BSA regulations define "money transmission services" as "the acceptance of currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means."[91] Depending on the facts and circumstances surrounding a transaction, a person transmitting virtual currency may fall under FinCEN's BSA regulations.[92]

Federal law also criminalizes money transmission if the money transmitting business:[93]

- Is operated without a license in a state where such unlicensed activity is subject to criminal sanctions;
- Fails to register with FinCEN; or
- Otherwise involves the transportation or transmission of funds that are known to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity.

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[84] FinCEN, *What We Do*, https://www.fincen.gov/what-we-do (last visited Jan. 31, 2020).
[85] *Id.*
[86] Many of the federal provisions of the BSA have been codified in ch. 560, F.S., which has provided the OFR with additional compliance and enforcement tools.
[87] *Id.*
[88] *Id.*
[89] 31 C.F.R. § 1010.100 & 1022.380.
[90] *Id.*
[91] 31 C.F.R. § 1010.100.
[92] FinCEN Guidance, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies, FIN-2019-G001* (May 9, 2019), https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf (last visited Jan. 31, 2020).
[93] 31 U.S.C. § 1960.

Financial Technology

Financial technology, often referred to as "FinTech", encompasses a wide array of innovation in the financial services space. FinTech is technology-enabled innovation in financial services that could result in new business models, applications, processes or products with an associated material effect on the provision of financial services.[94] Technological innovation holds great promise for the provision of financial services, with the potential to increase market access, the range of product offerings, and convenience while also lowering costs to clients.[95] Greater competition and diversity in lending, payments, insurance, trading, and other areas of financial services can create a more efficient and resilient financial system.[96] Drivers of FinTech innovations include technology, regulation, and evolving consumer preferences, including customization.[97]

FinTech innovation is often thought to be synonymous with disruption of the traditional financial services market structure and its providers, such as banks. However, to date, the relationship between incumbent financial institutions and FinTech firms appears to be largely complementary and cooperative in nature.[98] FinTech firms have generally not had sufficient access to the low-cost funding or the customer base necessary to pose a serious competitive threat to established financial institutions in mature financial market segments.[99] Partnering allows FinTech firms to viably operate while still being relatively small and, depending on the jurisdiction and the business model, unburdened by some financial regulation while still benefitting from access to incumbents' client base.[100] At the same time, incumbents benefit from access to innovative technologies that provide a competitive edge.[101] Yet there are exceptions to this trend, as some FinTech firms have established inroads in credit provision and payments.[102]

III. Effect of Proposed Changes:

Florida Digital Service

Section 1 amends s. 20.22, F.S., to abolish the Division of State Technology and create the Division of Telecommunications and the Florida Digital Service.

Section 2 amends s. 282.0041, F.S., to create definitions:

- "Credential service provider" means a provider competitively procured by the department to supply secure identity management and verification services based on open standards to qualified entities;

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[94] Financial Stability Board, *FinTech and market structure in financial services: Market developments and potential financial stability implications* (Feb. 14, 2019), https://www.fsb.org/2019/02/fintech-and-market-structure-in-financial-services-market-developments-and-potential-financial-stability-implications/ (last visited Jan. 31, 2020).
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] *Id.*
[102] *Id.*

- "Data-call" means an electronic transaction with the credential service provider that verifies the authenticity of a digital identity by querying enterprise data;
- "Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;
- "Electronic credential" means a digital asset which verifies the identity of a person, organization, application, or device;
- "Enterprise" means the collection of state agencies. The term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Financial Services, and the judicial branch;
- "Enterprise architecture" means a comprehensive operational framework that contemplates the needs and assets of the enterprise to support interoperability across state government;
- "Interoperability" means the technical ability to share and use data across and throughout the enterprise; and
- "Qualified entity" means a public or private entity or individual that enters into a binding agreement with the department, meets usage criteria, agrees to terms and conditions, and is subsequently and prescriptively authorized by the department to access data under the terms of that agreement.

Section 3 amends s. 282.0051, F.S, to provide the powers, duties, and functions of the Florida Digital Service. The bill establishes the Florida Digital Service within the Department of Management Services to create innovative solutions that securely modernize state government, achieve value through digital transformation and interoperability, and fully support the cloud-first policy as specified in s. 282.206, F.S.

The bill revises provisions throughout the section which currently give DMS oversight and management authority over agency information technology projects to instead give the Florida Digital Service this oversight and management authority over agency projects that have an information technology component. In the provision for the Florida Digital Service to perform project oversight on all state agency information technology projects that have an information technology component with a total project cost costs of $10 million or more and that are funded in the General Appropriations Act or any other law, the bill requires the Florida Digital Service to establish a process for state agencies to apply for an exception to these requirements for a specific project with an information technology component. In the provision requiring that, notwithstanding any other law, the Florida Digital Service must provide project oversight on any project with an information technology component of the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services which has a total project cost of $25 million or more and which impacts one or more other agencies, the bill similarly requires the Florida Digital Service to establish a process for these departments to apply for an exception for a specific project with an information technology component.

The DMS Secretary is required to appoint a state chief information officer to head the Florida Digital Service, and the state chief information officer must appoint a chief data officer.

The Florida Digital Service must develop a comprehensive enterprise architecture for all state departments and agencies that:

- Recognizes the unique needs of those included within the enterprise that results in the publication of standards, terminologies, and procurement guidelines to facilitate digital interoperability;
- Supports the cloud-first policy; and
- Addresses how information technology infrastructure may be modernized to achieve cloud-first objectives.

The Florida Digital Service, pursuant to legislative appropriation:

- Create and maintain a comprehensive indexed data catalog that lists what data elements are housed within the enterprise and in which legacy system or application these data elements are located;
- Develop and publish, in collaboration with the enterprise, a data dictionary for each agency that reflects the nomenclature in the comprehensive indexed data catalog;
- Review and document use cases across the enterprise architecture;
- Develop and publish standards that support the creation and deployment of application programming interfaces to facilitate integration throughout the enterprise;
- Facilitate collaborative analysis of enterprise architecture data to improve service delivery;
- Develop plans to provide a testing environment in which any newly developed solution can be tested for compliance within the enterprise architecture and for functionality assurance before deployment;
- Publish standards necessary to facilitate a secure ecosystem of data interoperability that is compliant with the enterprise architecture and allows for a qualified entity to access enterprise's data under the terms of the agreements with the department; and
- Publishing standards that facilitate the deployment of applications or solutions to existing enterprise obligations in a controlled and phased approach.

Pursuant to legislative authorization and subject to appropriation, the department may procure a credential service provider through a competitive process to supply secure identity management and verification services to qualified entities based on open standards. The department also may enter into agreements with qualified entities. The terms of the agreements between the department, the credential service provider and the qualified entities must be based on the per-data-call or subscription charges to validate and authenticate and allow the department to recover any state costs for implementing and administering a solution. Credential service provider and qualifying entity revenues may not be derived from any other transactions that generate revenue for the enterprise outside of the per-data-call or subscription charges.

All revenues generated from the agreements with the credential service provider and qualified entities must be remitted to the department, and the department must deposit these revenues into the Department of Management Services Operating Trust Fund for distribution pursuant to a legislative appropriation and department agreements with the credential service provider and qualified entities.

The Florida Digital Service may develop a process to:

- Receive written notice from the state agencies within the enterprise of any planned or existing procurement of an information technology project that is subject to governance by the enterprise architecture;
- Intervene in any planned procurement by a state agency so that the procurement complies with the enterprise architecture; and
- Report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on any information technology project within the judicial branch that does not comply with the enterprise architecture.

Section 4 amends s. 282.00515, F.S. It deletes the current provisions requiring the Cabinet agencies, the Department of Legal Affairs, the Department of Financial Services, and the Department of Agriculture and Consumer Services, to either adopt statutory information technology standards or adopt alternative standards based on best practices and industry standards, and authorizes the agencies to contract with DMS to provide information technology services. It replaces this with provisions creating the Enterprise Architecture Advisory Council, a 13-member group that is to meet at least semiannually to discuss implementation, management, and coordination of the enterprise architecture; identify potential issues and threats with specific use cases; and recommend proactive solutions.

Section 5 amends s. 282.318, F.S., to require the state chief information officer to appoint the state chief information security officer for the Florida Digital Service.

Sections 6, 7, 8, 9, and 10 amend ss. 287.0591, 365.171, 365.172, 365.173, and 943.0415, F.S., respectively, to make technical, conforming changes.

Financial Technology Sandbox

Section 9 creates s. 559.952, F.S., the "Financial Technology Sandbox" effective January 1, 2021.

Creation of the Sandbox

The bill creates the Financial Technology Sandbox within the Office of Financial Regulation to allow financial technology innovators to test new products and services in a supervised, flexible regulatory sandbox, using exceptions of specified general law and waivers of the corresponding rule requirements under defined conditions. The creation of a supervised, flexible regulatory sandbox provides a welcoming business environment for technology innovators and may lead to significant business growth.

Definitions

The bill creates definitions:

- "Commission" means the Financial Services Commission;
- "Consumer" means a person in this state, whether a natural person or a business entity, who purchases, uses, receives, or enters into an agreement to purchase, use, or receive an

innovative financial product or service made available through the Financial Technology Sandbox;

- "Financial product or service" means a product or service related to finance, including securities, consumer credit, or money transmission, which is traditionally subject to general law or rule requirements in chapters 560, 516, 517, 520, or 537, F.S., and which is under the jurisdiction of the office;
- "Financial Technology Sandbox" means the program which allows a person to make an innovative financial product or service available to consumers during a sandbox period through an exception to general laws or and a waiver of rule requirements;
- "Innovative" means new or emerging technology, or new uses of existing technology, which provides a product, service, business model, or delivery mechanism to the public;
- "Office" means, unless the context clearly indicates otherwise, the Office of Financial Regulation; and
- "Sandbox period" means the period, initially not longer than 24 months, in which the office has:
    - Authorized an innovative financial product or service to be made available to consumers; and
    - Granted the person who makes the innovative financial product or service available an exception to general law or a waiver of the corresponding rule requirements, as determined by the office, so that authorization is possible.

Sandbox Application

Before filing an application to enter the Financial Technology Sandbox, a substantially affected person may seek a declaratory statement regarding the applicability of a statute, rule, or agency order to the petitioner's particular set of circumstances.

Before making an innovative financial product or service available to consumers in the Financial Technology Sandbox, a person must file an application with the office. The commission must prescribe by rule the form and manner of the application. In the application, the person must specify the general law or rule requirements for which an exception or waiver is sought and the reasons why these requirements prevent the innovative financial product or service from being made available to consumers. The application must also contain:

- The nature of the innovative financial product or service proposed to be made available to consumers in the Financial Technology Sandbox, including all relevant technical details;
- The potential risk to consumers and the methods that will be used to protect consumers and resolve complaints during the sandbox period;
- The business plan proposed by the applicant, including a statement regarding the applicant's current and proposed capitalization;
- Whether the applicant has the necessary personnel, adequate financial and technical expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or service;
- If any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service has pled no contest to, has been convicted or found guilty of, or is currently under investigation for, fraud, a state or federal securities violation, any property-based offense, or any crime involving moral turpitude or dishonest

dealing, their application to the sandbox will be denied. A plea of no contest, a conviction, or a finding of guilt must be reported regardless of adjudication;
- A copy of the disclosures that will be provided to consumers;
- The financial responsibility of any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service; and
- Any other factor that the office determines to be relevant.

A business entity filing an application must be a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent or virtual mailbox, in this state. Before a person applies on behalf of a business entity intending to make an innovative financial product or service available to consumers, the person must obtain the consent of the business entity.

The office shall approve or deny in writing a Financial Technology Sandbox application within 60 days after receiving the completed application. The office and the applicant may jointly agree to extend the time beyond 60 days. Consistent with this section, the office may impose conditions on any approval. In deciding to approve or deny an application, the office must consider the above-listed information in the application.

The office may not approve an application if the applicant had a prior Financial Technology Sandbox application that was approved and that related to a substantially similar financial product or service or if any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service was substantially involved with another Financial Technology Sandbox applicant whose application was approved and whose application related to a substantially similar financial product or service.

Upon approval of an application, the office must specify the general law or rule requirements, or portions thereof, for which an exception or rule waiver is granted during the sandbox period and the length of the initial sandbox period, not to exceed 24 months. The office must post on its website notice of the approval of the application, a summary of the innovative financial product or service, and the contact information of the person making the financial product or service available.

Sandbox Operation

A person whose Financial Technology Sandbox application is approved may make an innovative financial product or service available to consumers during the sandbox period. The office may, on a case-by-case basis and after consultation with the person who makes the financial product or service available to consumers, specify the maximum number of consumers authorized to receive an innovative financial product or service. The office may not authorize more than 15,000 consumers to receive the financial product or service until the person who makes the financial product or service available to consumers has filed the first required biennial report. After the filing of the first report, if the person demonstrates adequate financial capitalization, risk management process, and management oversight, the office may authorize up to 25,000 consumers to receive the financial product or service.

Before a consumer purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service through the Financial Technology Sandbox, the person making the financial product or service available must provide a written statement of all of the following to the consumer:

- The name and contact information of the person making the financial product or service available to consumers;
- That the financial product or service has been authorized to be made available to consumers for a temporary period by the office, under the laws of this state;
- That this state does not endorse the financial product or service;
- That the financial product or service is undergoing testing, may not function as intended, and may entail financial risk;
- That the person making the financial product or service available to consumers is not immune from civil liability for any losses or damages caused by the financial product or service;
- The expected end date of the sandbox period;
- The contact information for the office, and notification that suspected legal violations, complaints, or other comments related to the financial product or service may be submitted to the office; and
- Any other statements or disclosures required by rule of the commission.

The written statement must contain an acknowledgment from the consumer, which must be retained for the duration of the sandbox period by the person making the financial product or service available.

The office may enter into an agreement with a state, federal, or foreign regulatory agency to allow persons:

- Who make an innovative financial product or service available in this state through the Financial Technology Sandbox to make their products or services available in other jurisdictions; and
- Who operate in similar financial technology sandboxes in other jurisdictions to make innovative financial products and services available in this state.

A person whose Financial Technology Sandbox application is approved by the office must maintain comprehensive records relating to the innovative financial product or service. The person must keep these records for at least 5 years after the conclusion of the sandbox period. The commission may specify by rule additional records requirements. The office may examine the records at any time, with or without notice.

Sandbox Period Extension and Conclusion

A person who is authorized to make an innovative financial product or service available to consumers may apply for an extension of the initial sandbox period for up to 12 additional months. A complete application for an extension must be filed with the office at least 90 days before the conclusion of the initial sandbox period. The office must approve or deny the application for extension in writing at least 35 days before the conclusion of the initial sandbox period. In deciding to approve or deny an application for extension of the sandbox period, the

office must, at a minimum, consider the current status of the factors previously considered in deciding to approve or deny an application to enter the Financial Technology Sandbox. An application for an extension must cite one of the following reasons as the basis for the application and must provide all relevant supporting information that:

- Amendments to general law or rules are necessary to offer the innovative financial product or service in this state permanently; or
- An application for a license that is required in order to offer the innovative financial product or service in this state permanently has been filed with the office, and approval is pending.

At least 30 days before the conclusion of the initial sandbox period or the extension, whichever is later, a person who makes an innovative financial product or service available must provide written notification to consumers regarding the conclusion of the initial sandbox period or the extension and may not make the financial product or service available to any new consumers after the conclusion of the initial sandbox period or the extension, whichever is later, until legal authority outside of the Financial Technology Sandbox exists to make the financial product or service available to consumers. After the conclusion of the sandbox period or the extension, whichever is later, the person who makes the innovative financial product or service available may:

- Collect and receive money owed to the person or pay money owed by the person, based on agreements with consumers made before the conclusion of the sandbox period or the extension;
- Take necessary legal action; and
- Take other actions authorized by commission rule which are not inconsistent with this subsection.

Exceptions of General Law and Waivers of Rules

The bill provides that if an application to enter the sandbox is approved for a person who otherwise would be subject to the provisions of chapters 560, 516, 517, 520, or 537, F.S., the following provisions are not be applicable to the approved sandbox participant:

- Section 560.1105, F.S., which provides records retention requirements for money services businesses;
- Section 560.118, F.S., which requires money services businesses to file annual financial audit reports;
- Section 560.125, F.S., except for s. 560.125(2), F.S., which provides for unlicensed activities by money services businesses and penalties for these activities, with subsection (2) providing that only a money services business licensed under Part II may appoint an authorized vendor;
- Section 560.128, F.S., which provides that a money services business and an authorized vendor must provide each customer with a toll-free telephone number, or the address and telephone number of the office, and which authorizes the Financial Services Commission to require, by rule, that a licensee display its license at each business location;
- Section 560.1401, F.S., except for s. 560.1401(2)-(4) , F.S., with subsections (1) and (5), which are excepted, requiring that an applicant for licensure as a money services business demonstrate to the office the character and general fitness necessary to command the confidence of the public and warrant the belief that the money services business or deferred presentment provider shall be operated lawfully and fairly and provide the office with all

information required under the chapter and related rules, and with subsections (2)-(4), which are not excepted, requiring that an applicant be legally authorized to do business in this state, be registered as a money services business with the Financial Crimes Enforcement Network, and have an anti-money laundering program in place which meets federal requirements;

- Section 560.141, F.S., except for s. 560.141(1)(b)-(d), F.S., which establishes the requirements for application for a license as a money services business, with paragraph (b) requiring a nonrefundable application fee, paragraph (c) requiring submission of fingerprints, and paragraph (d) requiring a copy of the applicant's written anti-money laundering program;
- Section 560.142, F.S., except that the office may prorate the license renewal fees provided in ss. 560.142 and 560.143, F.S., for an extension, which provides for license renewal;
- Section 560.143(2), F.S., to the extent necessary for proration of the renewal fee;
- Section 560.205, F.S., except for s. 560.205(1) and (3), F.S., which provides additional license application requirement, with subsection (2) requiring a sample form of payment instrument and subsection (4) requiring a copy of the applicant's most recent financial audit report, and with subsection (1) requiring a sample vendor contract and subsection (3) requiring documents demonstrating that net worth and bonding requirements have been met;
- Section 560.208, F.S., except for s. 560.208(3)-(6), F.S., which provides requirements for conduct of business, with subsections (1)-(2) authorizing a licensee to conduct business at one or more branches or by means of authorized vendors and to charge a different price for a money transmitter based on the mode of transmission and subsections (3)-(6) making the licensee responsible for acts of its authorized vendors and requiring the licensee to place a customer's property in a segregated account in a federally insured financial institution, to ensure that money transmitted is available to the designated recipient within 10 business days after receipt, and to immediately upon receipt of currency or payment instrument provide a confirmation or sequence number to the customer verbally, by paper, or electronically;
- Section 560.209, F.S., except that the office may modify the net worth, corporate surety bond, and collateral deposit amounts required, with the modified amounts be in such lower amounts that the office determines to be commensurate with the considerations under paragraph (4)(e) and the maximum number of consumers authorized to receive the financial product or service under this section; s. 560.209, F.S., provides minimum net worth, surety bond, and collateral deposit requirements;
- Section 516.03, F.S., except for the license and investigation fee. The office may prorate the license renewal fees for an extension granted under subsection (8). The office may not waive the evidence of liquid assets of at least $25,000; s. 516.03, F.S., provides for an application to make loans under the consumer finance chapter;
- Section 516.05, F.S., except that the office may make an investigation of the facts concerning the applicant's background, with this section providing for the license to make loans under the consumer finance chapter;
- Section 516.12, F.S., which provides licensee recordkeeping requirements;
- Section 516.19, F.S., which provides penalties for violations of specified sections of chapter 516, F.S.;
- Section 517.07, F.S., which provides for registration of securities to be sold in this state;
- Section 517.12, F.S., which requires registration of all securities dealers, associated persons, and issuers of securities;

- Section 517.121, F.S., which requires each dealer, investment adviser, branch office, associated person, or intermediary to maintain such books and records as the commission may prescribe by rule, and requires the Office of Financial Regulation to, at intermittent periods, examine their affairs and books and records;
- Section 520.03, F.S., except for the application fee, with this section providing for licenses to engage in the business of a motor vehicle retail installment seller;
- Section 520.12, F.S., which provides penalties for violation of provisions relating to retail installment sales;
- Section 520.25, F.S., which provides penalties for a violation of the provisions on retail installment sales of distributed energy generation systems;
- Section 520.32, F.S., except for the application fee, which provides for licenses to engage in retail installment transactions: The office may prorate fees for an extension;
- Section 520.39, F.S., which provides penalties for violations involving retail installment transactions;
- Section 520.52, F.S., except for the application fee, which provides for licensees for a sales finance company: The office may prorate fees for an extension;
- Section 520.57, F.S., which provides penalties for violations relating to engages in the business of a sales finance company;
- Section 520.63, F.S., except for the application fee, which provides for licensees engaging in or transacting business as a home improvement finance seller: The office may prorate fees for an extension;
- Section 520.98, F.S., which provides penalties for violations of provisions relating to home improvement finance sales;
- Section 520.997, F.S., which requires every licensee to maintain, at the principal place of business, such books, accounts, and records as will enable the office to determine whether the business is being operated in accordance with the provisions of chapter 520, F.S.;
- Section 537.004, F.S., except for s. 537.004(2) and (5), F.S., which provides for licenses for title loan lenders: The office may prorate fees for an extension;
- Section 537.005, F.S., except that the office may modify the required corporate surety bond amount, which provides for applications for licenses for title loan lenders;
- Section 537.007, F.S., which provides remedies for title loans made without a license;
- Section 537.009, F.S., which provides requirements for recordkeeping by a title loan lender; and
- Section 537.015, F.S., which provides criminal penalties for acting as a title loan lender without first obtaining the required license.

During a sandbox period, these exceptions are applicable if all of the following conditions are met:

- The general law or corresponding rule currently prevents the innovative financial product or service to be made available to consumers;
- The exceptions or rule waivers are not broader than necessary to accomplish the purposes and standards specified in this section, as determined by the office;
- No provision relating to the liability of an incorporator, director, or officer of the applicant is eligible for a waiver; and
- The other requirements of this section are met.

Notwithstanding any other provision of law, upon approval of a Financial Technology Sandbox application, the office may grant an applicant a waiver of a requirement, or a portion thereof, which is imposed by rule as authorized by any of the following provisions of general law, if all of the above conditions.

Report

A person authorized to make an innovative financial product or service available to consumers must submit a report to the office twice a year, as prescribed by commission rule. The report must, at a minimum, include financial reports and the number of consumers who have received the financial product or service.

Construction

A person whose Financial Technology Sandbox application is approved must be deemed licensed under the applicable exceptions to general law or waiver of the rule requirements unless the person's authorization to make the financial product or service available to consumers under this section has been revoked or suspended.

Violations and Penalties

A person who makes an innovative financial product or service available to consumers in the Financial Technology Sandbox is not immune from civil damages for acts and omissions relating to this section and is subject to all criminal statutes and any other statute not specifically excepted.

The office may, by order, revoke or suspend authorization granted to a person to make an innovative financial product or service available to consumers if:

- The person has violated or refused to comply with this section, a rule of the commission, an order of the office, or a condition placed by the office on the approval of the person's Financial Technology Sandbox application;
- A fact or condition exists that, if it had existed or become known at the time that the Financial Technology Sandbox application was pending, would have warranted denial of the application or the imposition of material conditions;
- A material error, false statement, misrepresentation, or material omission was made in the Financial Technology Sandbox application; or
- After consultation with the person, continued testing of the innovative financial product or service would:
    - Be likely to harm consumers; or
    - No longer serve the purposes of this section because of the financial or operational failure of the financial product or service.

Written notice of a revocation or suspension order must be served using any means authorized by law. If the notice relates to a suspension, the notice must include any condition or remedial action that the person must complete before the office lifts the suspension.

The office may refer any suspected violation of law to an appropriate state or federal agency for investigation, prosecution, civil penalties, and other appropriate enforcement actions.

If service of process on a person making an innovative financial product or service available to consumers in the Financial Technology Sandbox is not feasible, service on the office shall be deemed service on such person.

Rules and Orders

The commission must adopt rules to administer this section.

The office may issue all necessary orders to enforce this section and may enforce the orders in accordance with chapter 120 or in any court of competent jurisdiction. These orders include, but are not limited to, orders for payment of restitution for harm suffered by consumers as a result of an innovative financial product or service.

Effective Date

Section 10 provides that, except as otherwise expressly provided, the bill takes effect July 1, 2020. This refers to the sandbox provisions, which take effect January 1, 2021.

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:

The bill *may* be interpreted authorize executive branch employees, not the Legislature, to determine the application of general law, without guidance or limitation. See VII Related Issues The cornerstone of American democracy known as separation of powers recognizes three separate branches of government—the executive, the legislative, and the judicial—each with its own powers and responsibilities. Florida courts have traditionally applied a strict separation of powers doctrine, stating that no branch may encroach on the powers of another and that no branch may delegate to another branch its constitutionally assigned power. *Chiles v. Children A, B, C, D, E, & F*, 589 So.2d 260, 264 (Fla.1991). This prohibition, known as the nondelegation doctrine, requires that "fundamental and primary policy decisions ... be made by members of the legislature who are elected to

perform those tasks, and [that the] administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program." *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla.1978). In other words, statutes granting power to the executive branch "must clearly announce adequate standards to guide ... in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion." *Lewis v. Bank of Pasco County*, 346 So.2d 53, 55–56 (Fla.1976).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill could result in a positive fiscal impact on state government revenues as it requires certain entities which use the newly-created digital license functionality to pay a per-use fee or purchase a subscription in order to verify the authenticity of a digital identity. The bill specifies that the revenue generated must be collected by DMS and deposited in the working capital trust fund for distribution pursuant to legislative appropriation.

The bill will have an indeterminate fiscal impact on state government expenditures as it expands the current duties of DMS, and its subdivisions, relating to state IT management, places new responsibilities on that department, and creates two new governmental entities: the Florida Digital Service and the Enterprise Architecture Advisory Council. It is unclear if the bill's requirements could be absorbed within DMS's current resources.

The bill will have a negative fiscal impact on the OFR. Under the Financial Technology Sandbox, the fees will be the same as under the existing license in part II of ch. 560, F.S., except that the renewal fee can be prorated because the Financial Technology Sandbox can only be extended for up to one year, whereas the renewed license under part II of ch. 560, F.S., is for a two-year period. Depending on the number of participants and the complexity of oversight, it is possible that the OFR may need more staff. Additionally, the OFR will need to make changes to their information technology infrastructure in order to administer the program. According to the OFR, such changes will cost an estimated $250,115.[103]

[103] Email from Alex Anderson, Director of Governmental Relations for the OFR, RE: PCS for HB 1391 Fiscal Impact (Feb. 3, 2020).

VI. Technical Deficiencies:

None.

VII. Related Issues:

There is some uncertainty as to how some of the sandbox provisions on exceptions to general law will be interpreted and applied. The bill provides the following provisions.

- In the application [to enter the sandbox], the person must specify the general law or rule requirements for which an exception or waiver is sought and the reasons why these requirements prevent the innovative financial product or service from being made available to consumers." (Lines 806-810)
- "If the application [to enter the sandbox] is approved for a person who otherwise would be subject to the provisions of chapters 560, 516, 517, 520, or 537, the following provisions shall not be applicable to the approved sandbox participant" (Lines 996-1000); and
- "During a sandbox period, the exceptions granted in paragraph (a) are applicable if all of the following conditions are met:
  - The general law or corresponding rule currently prevents the innovative financial product or service to be made available to consumers.
  - The exceptions or rule waivers are not broader than necessary to accomplish the purposes and standards specified in this section, as determined by the office." (Lines 1063-1071)

The exceptions to general law provisions appear to except application of *all* listed to every sandbox participant, which would negate the provisions for specification of specific general law for which an exception is sought and for approval of an application and application of the exceptions only if *the* general law prevents making the product or service available and the exceptions are not broader than necessary to accomplish the purposes and standards. If, on the other hand, the latter provisions are given effect, in essence reading something like an "as appropriate, on a case by case basis" standard into the exception provision, this raises an unlawful delegation of legislative authority issue as the employee making the determinations of applicability and lack of overbreadth would be determining which statutes apply, not the Legislature. See IV E. Other Constitutional Issues.

The bill requires a person making a financial product or service available through the Financial Technology Sandbox to provide consumers a written notice containing a statement that the person making the product or service available "is not immune from civil liability for any losses or damages caused by the financial product or service." (Lines 910-913) It also provides that a person who makes an innovative product or service available in the sandbox is not immune from civil damages for acts and omissions relating to this section and is subject to all criminal statutes. (Lines 1089-1095) This seems to suggest an intent that the person retain the same level of liability for losses or damages as if they were operating outside the sandbox. Given the bill's provisions on exceptions of requirements imposed by general law or waiver of the corresponding rule requirements (989-1075), however, this may not be the case as some potential liability and criminal acts may be based, at least in part, on these requirements.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.22, 282.0051, 282.318, 287.0591, 365.171, 365.172, 365.173, and 943.0415.

This bill creates section 559.952 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 Innovation, Industry, and Technology on February 10, 2020:
The committee substitute:

- Creates the definitions relating to the Florida Digital Service in s. 282.0041, F.S., instead of s. 282.0051, F.S.;
- Provides new definitions for "credential service provider," "data call," "electronic," electronic credential," and "electronic credential provider";
- Changes the definition of "enterprise" for purposes of the provisions on the Florida Digital Service's enterprise architecture to include all entities within the executive branch of state government, plus the Justice Administrative Commission and the Public Service Commission, and Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Financial Services, and the judicial branch;
- Expands the Florida Digital Service's oversight of and involvement in projects that have an information technology component and provides for exceptions;
- Deletes all qualifications for the state chief information officer, the state chief data officer, and the state chief information security officer;
- Deletes the provisions on the Florida Digital Service enforcing the enterprise architecture by intervening in any procurement of information technology and delaying the procurement until it complies with the enterprise architecture;
- Deletes the requirement that the enterprise architecture's comprehensive account for all of the needs and responsibilities of a department;
- Requires the terms of the contract with a credential service provider pay for that service on a per-data call or subscription basis, with the revenues from these charges deposited into DMS's operating trust find for distribution, with DMS to recover all costs for implementing and administering the electronic credential solution;
- Authorizes the Florida Digital Service to "report to the legislative branch on any project within the judicial branch which does not comply with the enterprise architecture, while understanding the separation of powers";
- Creates the Enterprise Architecture Advisory Council to meet semiannually to discuss implementation, management, and coordination of the enterprise architecture; identify potential issues and threats with specific use cases; and develop proactive solutions;
- Creates the Financial Technology Sandbox Act effective January 1, 2021;
- Provides authority for exceptions rather than waivers of certain statutory requirements;

- Deletes banking products and services from the definition of financial product or service and deletes references to blockchain technology;
- Deletes from the definition of "innovative" the requirement that the technology "has no substantially comparable, widely available analog in this state";
- Authorizes the Office of Financial Regulation, not the Commissioner of the Office of Financial Regulation to waive a requirement or a portion thereof which is imposed by a general law or rule, and lists individual statutes which may be waived instead of entire chapters;
- Provides for declaratory statement on applicability of statutes, rules, or orders;
- Provides that the Financial Services Commission is to prescribe by rule the form and manner of the application to enter the Financial Technology Sandbox, not the Commissioner of the Office of Financial Regulation;
- Deletes a requirement that the applicant submit fingerprints for each individual filing an application and each individual who is substantially involved in the development, operation, or management of the innovative financial product or service, together with all the provisions relating to this requirement;
- Deletes a requirement that a person whose Financial Technology Sandbox application is approved post a consumer protection bond with the commissioner as security for potential losses suffered by consumers;
- Adds a limitation of 15,000 consumers to receive the financial product or service prior to filing the first activity report, with the limit increased after such filing to 25,000; and
- Adds a requirement that these reports, at a minimum, include financial reports and the number of consumers who have received the financial product or service.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/12/2020	.	
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The Committee on Innovation, Industry, and Technology (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (2) of section 20.22, Florida Statutes, is amended to read:

20.22 Department of Management Services.—There is created a Department of Management Services.

(2) The ~~following divisions and programs within the~~ Department of Management Services shall consist of the following

~~are established~~:

(a) The Facilities Program.

(b) The Division of Telecommunications ~~State Technology, the director of which is appointed by the secretary of the department and shall serve as the state chief information officer. The state chief information officer must be a proven, effective administrator who must have at least 10 years of executive-level experience in the public or private sector, preferably with experience in the development of information technology strategic planning and the development and implementation of fiscal and substantive information technology policy and standards~~.

(c) The Workforce Program.

(d)1. The Support Program.

2. The Federal Property Assistance Program.

(e) The Administration Program.

(f) The Division of Administrative Hearings.

(g) The Division of Retirement.

(h) The Division of State Group Insurance.

(i) The Florida Digital Service.

Section 2. Section 282.0051, Florida Statutes, is amended to read:

282.0051 Florida Digital Service ~~Department of Management Services; powers, duties, and functions~~.—There is established the Florida Digital Service within the department to create innovative solutions that securely modernize state government and achieve value through digital transformation and interoperability.

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

(a) "Credential service provider" means a provider competitively procured by the department to supply secure identity management and verification services based on open standards to qualified entities.

(b) "Data call" means an electronic transaction with the credential service provider which verifies the authenticity of a digital identity by querying enterprise data.

(c) "Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(d) "Electronic credential" means an electronic representation of a physical driver license or identification card which is viewable in an electronic format and is capable of being verified and authenticated.

(e) "Electronic credential provider" means a qualified entity contracted with the department to provide electronic credentials to eligible driver license or identification card holders.

(f) "Enterprise" means the collection of state agencies as defined in s. 282.0041, except that the term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Financial Services, and the judicial branch.

(g) "Enterprise architecture" means a comprehensive operational framework that contemplates the needs and assets of the enterprise to support interoperability across state government.

(h) "Interoperability" means the technical ability to share and use data across and throughout the enterprise.

(i) "Qualified entity" means a public or private entity or individual that enters into a binding agreement with the department, meets usage criteria, agrees to terms and conditions, and is subsequently and prescriptively authorized by the department to access data under the terms of that agreement.

(2) The Florida Digital Service ~~department~~ shall have the following powers, duties, and functions in full support of the cloud-first policy as described in s. 282.206:

(a) ~~(1)~~ Develop and publish information technology policy for the management of the state's information technology resources.

(b) ~~(2)~~ Establish and publish information technology architecture standards to provide for the most efficient use of ~~the state's~~ information technology resources and to ensure compatibility and alignment with the needs of state agencies. The Florida Digital Service ~~department~~ shall assist state agencies in complying with the standards.

(c) ~~(3)~~ Establish project management and oversight standards with which state agencies must comply when implementing projects that have an information technology component ~~projects~~. The Florida Digital Service ~~department~~ shall provide training opportunities to state agencies to assist in the adoption of the project management and oversight standards. To support data-driven decisionmaking, the standards must include, but are not limited to:

1. ~~(a)~~ Performance measurements and metrics that objectively reflect the status of a project with an information technology component ~~project~~ based on a defined and documented project scope, cost, and schedule.


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2.~~(b)~~ Methodologies for calculating acceptable variances in the projected versus actual scope, schedule, or cost of a project with an information technology component ~~project~~.

3.~~(c)~~ Reporting requirements, including requirements designed to alert all defined stakeholders that a project with an information technology component ~~project~~ has exceeded acceptable variances defined and documented in a project plan.

4.~~(d)~~ Content, format, and frequency of project updates.

(d)~~(4)~~ Perform project oversight on all state agency ~~information technology~~ projects that have an information technology component and a total project cost ~~costs~~ of $10 million or more and that are funded in the General Appropriations Act or any other law. The Florida Digital Service ~~department~~ shall report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any project with an information technology component which ~~project that~~ the Florida Digital Service ~~department~~ identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in a project plan. The report must include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project, and a recommendation for corrective actions required, including suspension or termination of the project. The Florida Digital Service may establish a process for state agencies to apply for an exception to the requirements of this paragraph.

(e)~~(5)~~ Identify opportunities for standardization and consolidation of information technology services that support interoperability and the cloud-first policy as described in s.

282.206, business functions and operations, including administrative functions such as purchasing, accounting and reporting, cash management, and personnel, and that are common across state agencies. The Florida Digital Service ~~department~~ shall biennially on April 1 provide recommendations for standardization and consolidation to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(f) ~~(6)~~ Establish best practices for the procurement of information technology products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services.

(g) ~~(7)~~ Develop standards for information technology reports and updates, including, but not limited to, operational work plans, project spend plans, and project status reports, for use by state agencies.

(h) ~~(8)~~ Upon request, assist state agencies in the development of information technology-related legislative budget requests.

(i) ~~(9)~~ Conduct annual assessments of state agencies to determine compliance with all information technology standards and guidelines developed and published by the Florida Digital Service ~~department~~ and provide results of the assessments to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(j) ~~(10)~~ Provide operational management and oversight of the state data center established pursuant to s. 282.201, which includes:

1. ~~(a)~~ Implementing industry standards and best practices


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for the state data center's facilities, operations, maintenance, planning, and management processes.

2.~~(b)~~ Developing and implementing cost-recovery or other payment mechanisms that recover the full direct and indirect cost of services through charges to applicable customer entities. Such cost-recovery or other payment mechanisms must comply with applicable state and federal regulations concerning distribution and use of funds and must ensure that, for any fiscal year, no service or customer entity subsidizes another service or customer entity.

3.~~(c)~~ Developing and implementing appropriate operating guidelines and procedures necessary for the state data center to perform its duties pursuant to s. 282.201. The guidelines and procedures must comply with applicable state and federal laws, regulations, and policies and conform to generally accepted governmental accounting and auditing standards. The guidelines and procedures must include, but need not be limited to:

a.~~1.~~ Implementing a consolidated administrative support structure responsible for providing financial management, procurement, transactions involving real or personal property, human resources, and operational support.

b.~~2.~~ Implementing an annual reconciliation process to ensure that each customer entity is paying for the full direct and indirect cost of each service as determined by the customer entity's use of each service.

c.~~3.~~ Providing rebates that may be credited against future billings to customer entities when revenues exceed costs.

d.~~4.~~ Requiring customer entities to validate that sufficient funds exist in the appropriate data processing

appropriation category or will be transferred into the appropriate data processing appropriation category before implementation of a customer entity's request for a change in the type or level of service provided, if such change results in a net increase to the customer entity's cost for that fiscal year.

e.~~5.~~ By November 15 of each year, providing to the Office of Policy and Budget in the Executive Office of the Governor and to the chairs of the legislative appropriations committees the projected costs of providing data center services for the following fiscal year.

f.~~6.~~ Providing a plan for consideration by the Legislative Budget Commission if the cost of a service is increased for a reason other than a customer entity's request made pursuant to sub-subparagraph d. ~~subparagraph 4.~~ Such a plan is required only if the service cost increase results in a net increase to a customer entity for that fiscal year.

g.~~7.~~ Standardizing and consolidating procurement and contracting practices.

4.~~(d)~~ In collaboration with the Department of Law Enforcement, developing and implementing a process for detecting, reporting, and responding to information technology security incidents, breaches, and threats.

5.~~(e)~~ Adopting rules relating to the operation of the state data center, including, but not limited to, budgeting and accounting procedures, cost-recovery or other payment methodologies, and operating procedures.

~~(f) Conducting an annual market analysis to determine whether the state's approach to the provision of data center~~

~~services is the most effective and cost-efficient manner by which its customer entities can acquire such services, based on federal, state, and local government trends; best practices in service provision; and the acquisition of new and emerging technologies. The results of the market analysis shall assist the state data center in making adjustments to its data center service offerings.~~

(k) ~~(11)~~ Recommend other information technology services that should be designed, delivered, and managed as enterprise information technology services. Recommendations must include the identification of existing information technology resources associated with the services, if existing services must be transferred as a result of being delivered and managed as enterprise information technology services.

(l) ~~(12)~~ In consultation with state agencies, propose a methodology and approach for identifying and collecting both current and planned information technology expenditure data at the state agency level.

(m)1. ~~(13)(a)~~ Notwithstanding any other law, provide project oversight on any project with an information technology component ~~project~~ of the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services which has a total project cost of $25 million or more and which impacts one or more other agencies. Such projects with an information technology component ~~projects~~ must also comply with the applicable information technology architecture, project management and oversight, and reporting standards established by the Florida Digital Service ~~department~~. The Florida Digital Service may establish a process for state


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agencies to apply for an exception to the requirements of this subparagraph.

2.~~(b)~~ When performing the project oversight function specified in subparagraph 1. ~~paragraph (a)~~, report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any project with an information technology component ~~project~~ that the Florida Digital Service ~~department~~ identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in the project plan. The report shall include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project and a recommendation for corrective actions required, including suspension or termination of the project.

(n)~~(14)~~ If a project with an information technology component ~~project~~ implemented by a state agency must be connected to or otherwise accommodated by an information technology system administered by the Department of Financial Services, the Department of Legal Affairs, or the Department of Agriculture and Consumer Services, consult with these departments regarding the risks and other effects of such projects on their information technology systems and work cooperatively with these departments regarding the connections, interfaces, timing, or accommodations required to implement such projects.

(o)~~(15)~~ If adherence to standards or policies adopted by or established pursuant to this section causes conflict with federal regulations or requirements imposed on a state agency and results in adverse action against the state agency or

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federal funding, work with the state agency to provide alternative standards, policies, or requirements that do not conflict with the federal regulation or requirement. The Florida Digital Service ~~department~~ shall annually report such alternative standards to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(p)1.~~(16)(a)~~ Establish an information technology policy for all information technology-related state contracts, including state term contracts for information technology commodities, consultant services, and staff augmentation services. The information technology policy must include:

a.~~1.~~ Identification of the information technology product and service categories to be included in state term contracts.

b.~~2.~~ Requirements to be included in solicitations for state term contracts.

c.~~3.~~ Evaluation criteria for the award of information technology-related state term contracts.

d.~~4.~~ The term of each information technology-related state term contract.

e.~~5.~~ The maximum number of vendors authorized on each state term contract.

2.~~(b)~~ Evaluate vendor responses for information technology-related state term contract solicitations and invitations to negotiate.

3.~~(c)~~ Answer vendor questions on information technology-related state term contract solicitations.

4.~~(d)~~ Ensure that the information technology policy established pursuant to subparagraph 1. ~~paragraph (a)~~ is included in all solicitations and contracts that are


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administratively executed by the department.

(q) ~~(17)~~ Recommend potential methods for standardizing data across state agencies which will promote interoperability and reduce the collection of duplicative data.

(r) ~~(18)~~ Recommend open data technical standards and terminologies for use by state agencies.

(3)(a) The Secretary of Management Services shall appoint a state chief information officer, who shall administer the Florida Digital Service and is included in the Senior Management Service.

(b) The state chief information officer shall appoint a chief data officer, who shall report to the state chief information officer and is included in the Senior Management Service.

(4) The Florida Digital Service shall develop a comprehensive enterprise architecture that:

(a) Recognizes the unique needs of those included within the enterprise and that results in the publication of standards, terminologies, and procurement guidelines to facilitate digital interoperability.

(b) Supports the cloud-first policy as described in s. 282.206.

(c) Addresses how information technology infrastructure may be modernized to achieve current and future cloud-first objectives.

(5) The Florida Digital Service shall:

(a) Upon the receipt of an appropriation or approval of a budget amendment, create and maintain a comprehensive indexed data catalog that lists what data elements are housed within the

enterprise and in which legacy system or application these data elements are located.

(b) Upon the receipt of an appropriation or approval of a budget amendment, develop and publish, in collaboration with the enterprise, a data dictionary for each agency which reflects the nomenclature in the comprehensive indexed data catalog.

(c) Review and document use cases across the enterprise architecture.

(d) Develop solutions for authorized or mandated use cases in collaboration with the enterprise.

(e) Upon the receipt of an appropriation or approval of a budget amendment, develop, publish, and manage an application programming interface to facilitate integration throughout the enterprise.

(f) Facilitate collaborative analysis of enterprise architecture data to improve service delivery.

(g) Upon the receipt of an appropriation or approval of a budget amendment, provide a testing environment in which any newly developed solution can be tested for compliance within the enterprise architecture and for functionality assurance before deployment.

(h) Create the functionality necessary for a secure ecosystem of data interoperability which is compliant with the enterprise architecture and allows for a qualified entity to access the stored data under the terms of the agreement with the department.

(i)1. By utilizing existing resources or through the approval of an appropriation or budget amendment, procure a credential service provider through a competitive process

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pursuant to s. 287.057. The terms of the contract developed from such procurement shall pay for the value on a per-data call or subscription basis, and there shall be no cost to the department or law enforcement for using the services provided by the credential service provider.

a. The department shall enter into agreements with electronic credential providers that have the technological capabilities necessary to integrate with the credential service provider; ensure secure validation and authentication of data; meet usage criteria; agree to terms and conditions, privacy policies, and uniform remittance terms relating to the consumption of an electronic credential; and include clear, enforceable, and significant penalties for violations of the agreements.

b. Revenue generated must be collected by the department and deposited into the operating trust fund within the department for distribution pursuant to a legislative appropriation and department agreements with the credential service provider, the electronic credential providers, and the qualified entities. The terms of the agreements between the department and the credential service provider, the electronic credential providers, and the qualified entities must be based on the per-data call or subscription charges to validate and authenticate an electronic credential and allow the department to recover any state costs for implementing and administering an electronic credential solution. Provider revenues may not be derived from any other transactions that generate revenue for the department outside of the per-data call or subscription charges. Nothing herein shall be construed as a restriction on a

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provider's ability to generate additional revenues from third parties outside of the terms of the agreement.

2. Upon the signing of the enterprise architecture terms of service and privacy policies, provide to qualified entities and electronic credential providers appropriate access to the stored data to facilitate authorized integrations to collaboratively and less expensively, or at no taxpayer cost, solve enterprise use cases.

(j) Architect and deploy applications or solutions to existing enterprise obligations in a controlled and phased approach, including, but not limited to:

1. Digital licenses, including full identification management.

2. Upon the receipt of an appropriation or approval of a budget amendment, interoperability that enables supervisors of elections to authenticate voter eligibility in real time at the point of service.

3. The criminal justice database.

4. Motor vehicle insurance cancellation integration between insurers and the Department of Highway Safety and Motor Vehicles.

5. Upon the receipt of an appropriation or approval of a budget amendment, interoperability solutions between agencies, including, but not limited to, the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, the Department of Elderly Affairs, and the Department of Children and Families.

6. Interoperability solutions to support military members, veterans, and their families.

(6) The Florida Digital Service may develop a process to:

(a) Upon the request of funds in a legislative budget request, receive written notice from state agencies within the enterprise of any planned or existing procurement of an information technology project that is subject to governance by the enterprise architecture.

(b) Intervene in any planned procurement by a state agency so that it complies with the enterprise architecture.

(c) Report to the legislative branch on any project within the judicial branch which does not comply with the enterprise architecture, while understanding the separation of powers.

(7) ~~(19)~~ The Florida Digital Service may adopt rules to administer this section.

Section 3. Section 282.00515, Florida Statutes, is amended to read:

282.00515 Enterprise Architecture Advisory Council ~~Duties of Cabinet agencies~~.—

(1)(a) The Enterprise Architecture Advisory Council, an advisory council as defined in s. 20.03(7), is established within the Department of Management Services. The council shall comply with the requirements of s. 20.052 except as otherwise provided in this section.

(b) The council shall consist of:

1. The Governor or his or her designee.

2. Three members appointed by the Governor.

3. The director of the Office of Policy and Budget in the Executive Office of the Governor, or his or her designee.

4. The Secretary of Management Services or his or her designee.


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5. The state chief information officer or his or her designee.

6. The Chief Justice of the Supreme Court or his or her designee.

7. The President of the Senate or his or her designee.

8. The Speaker of the House of Representatives or his or her designee.

9. The chief information officer of the Department of Financial Services or his or her designee.

10. The chief information officer of the Department of Legal Affairs or his or her designee.

11. The chief information officer of the Department of Agriculture and Consumer Services or his or her designee.

(2)(a) The members appointed in this section shall be appointed to terms of 4 years. However, for the purpose of providing staggered terms:

1. The appointments by the Governor and the director of the Office of Policy and Budget in the Executive Office of the Governor are for initial terms of 2 years.

2. The appointments by the Secretary of Management Services and the state chief information officer are for initial terms of 4 years.

3. The appointment by the Chief Justice is for an initial term of 3 years.

4. The appointments by the President of the Senate and the Speaker of the House of Representatives are for initial terms of 2 years.

5. The appointments by the chief information officers of the Department of Financial Services, the Department of Legal

Affairs, and the Department of Agriculture and Consumer Services are for initial terms of 2 years.

(b) A vacancy on the council shall be filled in the same manner as the original appointment for the unexpired term.

(c) The council shall meet semiannually, beginning October 1, 2020, to discuss implementation, management, and coordination of the enterprise architecture as defined in s. 282.0051(1); identify potential issues and threats with specific use cases; and develop proactive solutions ~~The Department of Legal Affairs, the Department of Financial Services, and the Department of Agriculture and Consumer Services shall adopt the standards established in s. 282.0051(2), (3), and (7) or adopt alternative standards based on best practices and industry standards, and may contract with the department to provide or perform any of the services and functions described in s. 282.0051 for the Department of Legal Affairs, the Department of Financial Services, or the Department of Agriculture and Consumer Services~~.

Section 4. Paragraph (a) of subsection (3) of section 282.318, Florida Statutes, is amended to read:

282.318 Security of data and information technology.—

(3) The department is responsible for establishing standards and processes consistent with generally accepted best practices for information technology security, to include cybersecurity, and adopting rules that safeguard an agency's data, information, and information technology resources to ensure availability, confidentiality, and integrity and to mitigate risks. The department shall also:

(a) Designate a state chief information security officer,

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who shall be appointed by and report to the state chief information officer of the Florida Digital Service, and who is in the Senior Management Service. The state chief information security officer must have experience and expertise in security and risk management for communications and information technology resources.

Section 5. Subsection (4) of section 287.0591, Florida Statutes, is amended to read:

287.0591 Information technology.—

(4) If the department issues a competitive solicitation for information technology commodities, consultant services, or staff augmentation contractual services, the Florida Digital Service ~~Division of State Technology~~ within the department shall participate in such solicitations.

Section 6. Paragraph (a) of subsection (3) of section 365.171, Florida Statutes, is amended to read:

365.171 Emergency communications number E911 state plan.—

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

(a) "Office" means the Division of Telecommunications ~~State Technology~~ within the Department of Management Services, as designated by the secretary of the department.

Section 7. Paragraph (s) of subsection (3) of section 365.172, Florida Statutes, is amended to read:

365.172 Emergency communications number "E911."—

(3) DEFINITIONS.—Only as used in this section and ss. 365.171, 365.173, 365.174, and 365.177, the term:

(s) "Office" means the Division of Telecommunications ~~State Technology~~ within the Department of Management Services, as designated by the secretary of the department.


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Section 8. Paragraph (a) of subsection (1) of section 365.173, Florida Statutes, is amended to read:

365.173 Communications Number E911 System Fund.—

(1) REVENUES.—

(a) Revenues derived from the fee levied on subscribers under s. 365.172(8) must be paid by the board into the State Treasury on or before the 15th day of each month. Such moneys must be accounted for in a special fund to be designated as the Emergency Communications Number E911 System Fund, a fund created in the Division of Telecommunications ~~State Technology~~, or other office as designated by the Secretary of Management Services.

Section 9. Subsection (5) of section 943.0415, Florida Statutes, is amended to read:

943.0415 Cybercrime Office.—There is created within the Department of Law Enforcement the Cybercrime Office. The office may:

(5) Consult with the Florida Digital Service ~~Division of State Technology~~ within the Department of Management Services in the adoption of rules relating to the information technology security provisions in s. 282.318.

Section 10. Effective January 1, 2021, section 559.952, Florida Statutes, is created to read:

559.952 Financial Technology Sandbox.—

(1) SHORT TITLE.—This section may be cited as the "Financial Technology Sandbox."

(2) CREATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—There is created the Financial Technology Sandbox within the Office of Financial Regulation to allow financial technology innovators to test new products and services in a supervised, flexible


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regulatory sandbox using waivers of specified general law and corresponding rule requirements under defined conditions. The creation of a supervised, flexible regulatory sandbox provides a welcoming business environment for technology innovators and may lead to significant business growth.

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

(a) "Commission" means the Financial Services Commission.

(b) "Consumer" means a person in this state, whether a natural person or a business entity, who purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service made available through the Financial Technology Sandbox.

(c) "Financial product or service" means a product or service related to finance, including securities, consumer credit, or money transmission, which is traditionally subject to general law or rule requirements in the provisions enumerated in paragraph (4)(a) and which is under the jurisdiction of the office.

(d) "Financial Technology Sandbox" means the program created in this section which allows a person to make an innovative financial product or service available to consumers through waiver of the provisions enumerated in paragraph (4)(a) during a sandbox period through a waiver of general laws or rule requirements, or portions thereof, as specified in this section.

(e) "Innovative" means new or emerging technology, or new uses of existing technology, which provides a product, service, business model, or delivery mechanism to the public.

(f) "Office" means, unless the context clearly indicates otherwise, the Office of Financial Regulation.


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(g) "Sandbox period" means the period, initially not longer than 24 months, in which the office has:

1. Authorized an innovative financial product or service to be made available to consumers.

2. Granted the person who makes the innovative financial product or service available a waiver of general law or corresponding rule requirements, as determined by the office, so that the authorization under subparagraph 1. is possible.

(4) WAIVERS OF GENERAL LAW AND RULE REQUIREMENTS.—

(a) Upon approval of a Financial Technology Sandbox application, the office may grant an applicant a waiver of a requirement, or a portion thereof, which is imposed by a general law or corresponding rule in any of the following provisions, if all of the conditions in paragraph (b) are met:

1. Section 560.1105.

2. Section 560.118.

3. Section 560.125, except for s. 560.125(2).

4. Section 560.128.

5. Section 560.1401, except for s. 560.1401(2)-(4).

6. Section 560.141, except for s. 560.141(1)(b)-(d).

7. Section 560.142, except that the office may prorate, but may not entirely waive, the license renewal fees provided in ss. 560.142 and 560.143 for an extension granted under subsection (7).

8. Section 560.143(2) to the extent necessary for proration of the renewal fee under subparagraph 7.

9. Section 560.205, except for s. 560.205(1) and (3).

10. Section 560.208, except for s. 560.208(3)-(6).

11. Section 560.209, except that the office may modify, but

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may not entirely waive, the net worth, corporate surety bond, and collateral deposit amounts required under s. 560.209. The modified amounts must be in such lower amounts that the office determines to be commensurate with the considerations under paragraph (5)(e) and the maximum number of consumers authorized to receive the financial product or service under this section.

12. Section 516.03, except for the license and investigation fee. The office may prorate, but not entirely waive, the license renewal fees for an extension granted under subsection (7). The office may not waive the evidence of liquid assets of at least $25,000.

13. Section 516.05, except that the office may make an investigation of the facts concerning the applicant's background.

14. Section 516.12.

15. Section 516.19.

16. Section 517.07.

17. Section 517.12.

18. Section 517.121.

19. Section 520.03, except for the application fee. The office may prorate, but not entirely waive, the license renewal fees for an extension granted under subsection (7).

20. Section 520.12.

21. Section 520.25.

22. Section 520.32, except for the application fee. The office may prorate, but not entirely waive, the license renewal fees for an extension granted under subsection (7).

23. Section 520.39.

24. Section 520.52, except for the application fee. The

office may prorate, but not entirely waive, the license renewal fees for an extension granted under subsection (7).

25. Section 520.57.

26. Section 520.63, except for the application fee. The office may prorate, but not entirely waive, the license renewal fees for an extension granted under subsection (7).

27. Section 520.997.

28. Section 520.98.

29. Section 537.004, except for s. 537.004(2) and (5). The office may prorate, but not entirely waive, the license renewal fees for an extension granted under subsection (7).

30. Section 537.005, except that the office may modify, but not entirely waive, the corporate surety bond amount required by s. 537.005. The modified amount must be in such lower amount that the office determines to be commensurate with the considerations under paragraph (5)(e) and the maximum number of consumers authorized to receive the product or service under this section.

31. Section 537.007.

32. Section 537.009.

33. Section 537.015.

(b) During a sandbox period, the office may grant a waiver of a requirement, or a portion thereof, imposed by a general law or corresponding rule in any provision enumerated in paragraph (a) if all of the following conditions are met:

1. The general law or corresponding rule currently prevents the innovative financial product or service to be made available to consumers.

2. The waiver is not broader than necessary to accomplish

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the purposes and standards specified in this section, as determined by the office.

3. No provision relating to the liability of an incorporator, director, or officer of the applicant is eligible for a waiver.

4. The other requirements of this section are met.

(5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR APPROVAL.—

(a) Before filing an application to enter the Financial Technology Sandbox, a substantially affected person may seek a declaratory statement pursuant to s. 120.565 regarding the applicability of a statute, rule, or agency order to the petitioner's particular set of circumstances.

(b) Before making an innovative financial product or service available to consumers in the Financial Technology Sandbox, a person must file an application with the office. The commission shall prescribe by rule the form and manner of the application.

1. In the application, the person must specify the general law or rule requirements for which a waiver is sought and the reasons why these requirements prevent the innovative financial product or service from being made available to consumers.

2. The application must also contain the information specified in paragraph (e).

(c) A business entity filing an application under this section must be a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent or virtual mailbox, in this state.

(d) Before a person applies on behalf of a business entity

intending to make an innovative financial product or service available to consumers, the person must obtain the consent of the business entity.

(e) The office shall approve or deny in writing a Financial Technology Sandbox application within 60 days after receiving the completed application. The office and the applicant may jointly agree to extend the time beyond 60 days. Consistent with this section, the office may impose conditions on any approval. In deciding to approve or deny an application, the office must consider each of the following:

1. The nature of the innovative financial product or service proposed to be made available to consumers in the Financial Technology Sandbox, including all relevant technical details.

2. The potential risk to consumers and the methods that will be used to protect consumers and resolve complaints during the sandbox period.

3. The business plan proposed by the applicant, including a statement regarding the applicant's current and proposed capitalization.

4. Whether the applicant has the necessary personnel, adequate financial and technical expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or service.

5. Whether any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service has pled no contest to, has been convicted or found guilty of, or is currently under investigation for, fraud, a state or federal securities

violation, any property-based offense, or any crime involving moral turpitude or dishonest dealing. A plea of no contest, a conviction, or a finding of guilt must be reported under this subparagraph regardless of adjudication.

6. A copy of the disclosures that will be provided to consumers under paragraph (6)(c).

7. The financial responsibility of any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service.

8. Any other factor that the office determines to be relevant.

(f) The office may not approve an application if:

1. The applicant had a prior Financial Technology Sandbox application that was approved and that related to a substantially similar financial product or service; or

2. Any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service was substantially involved with another Financial Technology Sandbox applicant whose application was approved and whose application related to a substantially similar financial product or service.

(g) Upon approval of an application, the office shall specify the general law or rule requirements, or portions thereof, for which a waiver is granted during the sandbox period and the length of the initial sandbox period, not to exceed 24 months. The office shall post on its website notice of the approval of the application, a summary of the innovative financial product or service, and the contact information of the person making the financial product or service available.

(6) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

(a) A person whose Financial Technology Sandbox application is approved may make an innovative financial product or service available to consumers during the sandbox period.

(b) The office may, on a case-by-case basis and after consultation with the person who makes the financial product or service available to consumers, specify the maximum number of consumers authorized to receive an innovative financial product or service. The office may not authorize more than 15,000 consumers to receive the financial product or service until the person who makes the financial product or service available to consumers has filed the first report required under subsection (8). After the filing of the report, if the person demonstrates adequate financial capitalization, risk management process, and management oversight, the office may authorize up to 25,000 consumers to receive the financial product or service.

(c)1. Before a consumer purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service through the Financial Technology Sandbox, the person making the financial product or service available must provide a written statement of all of the following to the consumer:

a. The name and contact information of the person making the financial product or service available to consumers.

b. That the financial product or service has been authorized to be made available to consumers for a temporary period by the office, under the laws of this state.

c. That this state does not endorse the financial product or service.

d. That the financial product or service is undergoing testing, may not function as intended, and may entail financial risk.

e. That the person making the financial product or service available to consumers is not immune from civil liability for any losses or damages caused by the financial product or service.

f. The expected end date of the sandbox period.

g. The contact information for the office, and notification that suspected legal violations, complaints, or other comments related to the financial product or service may be submitted to the office.

h. Any other statements or disclosures required by rule of the commission which are necessary to further the purposes of this section.

2. The written statement must contain an acknowledgment from the consumer, which must be retained for the duration of the sandbox period by the person making the financial product or service available.

(d) The office may enter into an agreement with a state, federal, or foreign regulatory agency to allow persons:

1. Who make an innovative financial product or service available in this state through the Financial Technology Sandbox to make their products or services available in other jurisdictions.

2. Who operate in similar financial technology sandboxes in other jurisdictions to make innovative financial products and services available in this state under the standards of this section.

(e)1. A person whose Financial Technology Sandbox application is approved by the office shall maintain comprehensive records relating to the innovative financial product or service. The person shall keep these records for at least 5 years after the conclusion of the sandbox period. The commission may specify by rule additional records requirements.

2. The office may examine the records maintained under subparagraph 1. at any time, with or without notice.

(7) EXTENSIONS AND CONCLUSION OF SANDBOX PERIOD.—

(a) A person who is authorized to make an innovative financial product or service available to consumers may apply for an extension of the initial sandbox period for up to 12 additional months for a purpose specified in subparagraph (b)1. or subparagraph (b)2. A complete application for an extension must be filed with the office at least 90 days before the conclusion of the initial sandbox period. The office shall approve or deny the application for extension in writing at least 35 days before the conclusion of the initial sandbox period. In deciding to approve or deny an application for extension of the sandbox period, the office must, at a minimum, consider the current status of the factors previously considered under paragraph (5)(e).

(b) An application for an extension under paragraph (a) must cite one of the following reasons as the basis for the application and must provide all relevant supporting information that:

1. Amendments to general law or rules are necessary to offer the innovative financial product or service in this state permanently.

2. An application for a license that is required in order to offer the innovative financial product or service in this state permanently has been filed with the office, and approval is pending.

(c) At least 30 days before the conclusion of the initial sandbox period or the extension, whichever is later, a person who makes an innovative financial product or service available shall provide written notification to consumers regarding the conclusion of the initial sandbox period or the extension and may not make the financial product or service available to any new consumers after the conclusion of the initial sandbox period or the extension, whichever is later, until legal authority outside of the Financial Technology Sandbox exists to make the financial product or service available to consumers. After the conclusion of the sandbox period or the extension, whichever is later, the person who makes the innovative financial product or service available may:

1. Collect and receive money owed to the person or pay money owed by the person, based on agreements with consumers made before the conclusion of the sandbox period or the extension.

2. Take necessary legal action.

3. Take other actions authorized by commission rule which are not inconsistent with this subsection.

(8) REPORT.—A person authorized to make an innovative financial product or service available to consumers under this section shall submit a report to the office twice a year as prescribed by commission rule. The report must, at a minimum, include financial reports and the number of consumers who have

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received the financial product or service.

(9) CONSTRUCTION.—A person whose Financial Technology Sandbox application is approved shall be deemed licensed under part II of chapter 560 unless the person's authorization to make the financial product or service available to consumers under this section has been revoked or suspended.

(10) VIOLATIONS AND PENALTIES.—

(a) A person who makes an innovative financial product or service available to consumers in the Financial Technology Sandbox is:

1. Not immune from civil damages for acts and omissions relating to this section.

2. Subject to all criminal and consumer protection laws.

(b)1. The office may, by order, revoke or suspend authorization granted to a person to make an innovative financial product or service available to consumers if:

a. The person has violated or refused to comply with this section, a rule of the commission, an order of the office, or a condition placed by the office on the approval of the person's Financial Technology Sandbox application;

b. A fact or condition exists that, if it had existed or become known at the time that the Financial Technology Sandbox application was pending, would have warranted denial of the application or the imposition of material conditions;

c. A material error, false statement, misrepresentation, or material omission was made in the Financial Technology Sandbox application; or

d. After consultation with the person, continued testing of the innovative financial product or service would:


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(I) Be likely to harm consumers; or

(II) No longer serve the purposes of this section because of the financial or operational failure of the financial product or service.

2. Written notice of a revocation or suspension order made under subparagraph 1. must be served using any means authorized by law. If the notice relates to a suspension, the notice must include any condition or remedial action that the person must complete before the office lifts the suspension.

(c) The office may refer any suspected violation of law to an appropriate state or federal agency for investigation, prosecution, civil penalties, and other appropriate enforcement actions.

(d) If service of process on a person making an innovative financial product or service available to consumers in the Financial Technology Sandbox is not feasible, service on the office shall be deemed service on such person.

(11) RULES AND ORDERS.—

(a) The commission shall adopt rules to administer this section.

(b) The office may issue all necessary orders to enforce this section and may enforce the orders in accordance with chapter 120 or in any court of competent jurisdiction. These orders include, but are not limited to, orders for payment of restitution for harm suffered by consumers as a result of an innovative financial product or service.

Section 11. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020.


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939 ================ T I T L E A M E N D M E N T ================
940 And the title is amended as follows:
941 Delete everything before the enacting clause
942 and insert:
943 A bill to be entitled
944 An act relating to technology innovation; amending s.
945 20.22, F.S.; renaming the Division of State Technology
946 within the Department of Management Services as the
947 Division of Telecommunications; deleting provisions
948 relating to the appointment of the Division of State
949 Technology's director and qualifications for the state
950 chief information officer; adding the Florida Digital
951 Service to the department; amending s. 282.0051, F.S.;
952 establishing the Florida Digital Service within the
953 department; defining terms; transferring specified
954 powers, duties, and functions of the department to the
955 Florida Digital Service and revising such powers,
956 duties, and functions; providing for appointments of a
957 state chief information officer and a chief data
958 officer and specifying their duties; requiring the
959 Florida Digital Service to develop a comprehensive
960 enterprise architecture; providing requirements for
961 the enterprise architecture; specifying duties of and
962 authorized actions by the Florida Digital Service;
963 providing duties of the department; authorizing the
964 Florida Digital Service to adopt rules; amending s.
965 282.00515, F.S.; establishing the Enterprise
966 Architecture Advisory Council; requiring the council
967 to comply with specified requirements; providing

membership and meeting requirements and duties of the council; deleting provisions relating to specified duties and powers of the Department of Legal Affairs, the Department of Financial Services, and the Department of Agriculture and Consumer Services; amending ss. 282.318, 287.0591, 365.171, 365.172, 365.173, and 943.0415, F.S.; conforming provisions to changes made by the act; creating s. 559.952, F.S.; providing a short title; creating the Financial Technology Sandbox within the Office of Financial Regulation; defining terms; authorizing the office to grant waivers of specified financial regulatory requirements to certain applicants offering certain financial products or services during a sandbox period; specifying criteria for granting a waiver; requiring an application for the program for persons who want to make innovative financial products or services available to consumers; providing application requirements and procedures; providing standards for application approval or denial; requiring the office to perform certain actions upon approval of an application; specifying authorized actions of, limitations on, and disclosure requirements for persons making financial products or services available during a sandbox period; authorizing the office to enter into agreement with certain regulatory agencies for specified purposes; providing recordkeeping requirements; authorizing the office to examine specified records; providing requirements and

procedures for applying for extensions and concluding sandbox periods; requiring written notification to consumers at the end of an extension or conclusion of the sandbox period; providing acts that persons who make innovative financial products or services available to consumers may and may not engage in at the end of an extension or conclusion of the sandbox period; specifying reporting requirements to the office; providing construction; providing that such persons are not immune from civil damages and are subject to criminal and consumer protection laws; providing penalties; providing for service of process; requiring the Financial Services Commission to adopt rules; authorizing the office to issue orders and enforce such orders through administrative or judicial process; authorizing the office to issue and enforce orders for payment of restitution; providing effective dates.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/12/2020	.	
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The Committee on Innovation, Industry, and Technology (Hutson) recommended the following:

Senate Substitute for Amendment (427788) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (2) of section 20.22, Florida Statutes, is amended to read:

20.22 Department of Management Services.—There is created a Department of Management Services.

(2) The ~~following divisions and programs within the~~

Department of Management Services shall consist of the following ~~are established~~:

(a) The Facilities Program.

(b) The Division of Telecommunications ~~State Technology, the director of which is appointed by the secretary of the department and shall serve as the state chief information officer. The state chief information officer must be a proven, effective administrator who must have at least 10 years of executive-level experience in the public or private sector, preferably with experience in the development of information technology strategic planning and the development and implementation of fiscal and substantive information technology policy and standards~~.

(c) The Workforce Program.

(d)1.The Support Program.

2. The Federal Property Assistance Program.

(e) The Administration Program.

(f) The Division of Administrative Hearings.

(g) The Division of Retirement.

(h) The Division of State Group Insurance.

(i) The Florida Digital Service.

Section 2. Section 282.0041, Florida Statutes, is amended to read:

282.0041 Definitions.—As used in this chapter, the term:

(1) "Agency assessment" means the amount each customer entity must pay annually for services from the Department of Management Services and includes administrative and data center services costs.

(2) "Agency data center" means agency space containing 10

or more physical or logical servers.

(3) "Breach" has the same meaning as provided in s. 501.171.

(4) "Business continuity plan" means a collection of procedures and information designed to keep an agency's critical operations running during a period of displacement or interruption of normal operations.

(5) "Cloud computing" has the same meaning as provided in Special Publication 800-145 issued by the National Institute of Standards and Technology.

(6) "Computing facility" or "agency computing facility" means agency space containing fewer than a total of 10 physical or logical servers, but excluding single, logical-server installations that exclusively perform a utility function such as file and print servers.

(7) "Credential service provider" means a provider competitively procured by the department to supply secure identity management and verification services based on open standards to qualified entities.

(8) ~~(7)~~ "Customer entity" means an entity that obtains services from the Department of Management Services.

(9) ~~(8)~~ "Data" means a subset of structured information in a format that allows such information to be electronically retrieved and transmitted.

(10) "Data-call" means an electronic transaction with the credential service provider that verifies the authenticity of a digital identity by querying enterprise data.

(11) ~~(9)~~ "Department" means the Department of Management Services.

(12)~~(10)~~ "Disaster recovery" means the process, policies, procedures, and infrastructure related to preparing for and implementing recovery or continuation of an agency's vital technology infrastructure after a natural or human-induced disaster.

(13) "Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(14) "Electronic credential" means a digital asset which verifies the identity of a person, organization, application, or device.

(15) "Enterprise" means the collection of state agencies. The term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Financial Services, and the judicial branch.

(16) "Enterprise architecture" means a comprehensive operational framework that contemplates the needs and assets of the enterprise to support interoperability across state government.

(17)~~(11)~~ "Enterprise information technology service" means an information technology service that is used in all agencies or a subset of agencies and is established in law to be designed, delivered, and managed at the enterprise level.

(18)~~(12)~~ "Event" means an observable occurrence in a system or network.

(19)~~(13)~~ "Incident" means a violation or imminent threat of violation, whether such violation is accidental or deliberate, of information technology resources, security, policies, or practices. An imminent threat of violation refers to a situation


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in which the state agency has a factual basis for believing that a specific incident is about to occur.

(20)~~(14)~~ "Information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form.

(21)~~(15)~~ "Information technology policy" means a definite course or method of action selected from among one or more alternatives that guide and determine present and future decisions.

(22)~~(16)~~ "Information technology resources" has the same meaning as provided in s. 119.011.

(23)~~(17)~~ "Information technology security" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the integrity, availability, and confidentiality of data, information, and information technology resources.

(24) "Interoperability" means the technical ability to share and use data across and throughout the enterprise.

(25)~~(18)~~ "Open data" means data collected or created by a state agency and structured in a way that enables the data to be fully discoverable and usable by the public. The term does not include data that are restricted from public distribution based on federal or state privacy, confidentiality, and security laws and regulations or data for which a state agency is statutorily


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authorized to assess a fee for its distribution.

(26)~~(19)~~ "Performance metrics" means the measures of an organization's activities and performance.

(27)~~(20)~~ "Project" means an endeavor that has a defined start and end point; is undertaken to create or modify a unique product, service, or result; and has specific objectives that, when attained, signify completion.

(28)~~(21)~~ "Project oversight" means an independent review and analysis of an information technology project that provides information on the project's scope, completion timeframes, and budget and that identifies and quantifies issues or risks affecting the successful and timely completion of the project.

(29) "Qualified entity" means a public or private entity or individual that enters into a binding agreement with the department, meets usage criteria, agrees to terms and conditions, and is subsequently and prescriptively authorized by the department to access data under the terms of that agreement.

(30)~~(22)~~ "Risk assessment" means the process of identifying security risks, determining their magnitude, and identifying areas needing safeguards.

(31)~~(23)~~ "Service level" means the key performance indicators (KPI) of an organization or service which must be regularly performed, monitored, and achieved.

(32)~~(24)~~ "Service-level agreement" means a written contract between the Department of Management Services and a customer entity which specifies the scope of services provided, service level, the duration of the agreement, the responsible parties, and service costs. A service-level agreement is not a rule pursuant to chapter 120.

(33)~~(25)~~ "Stakeholder" means a person, group, organization, or state agency involved in or affected by a course of action.

(34)~~(26)~~ "Standards" means required practices, controls, components, or configurations established by an authority.

(35)~~(27)~~ "State agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. As used in part I of this chapter, except as otherwise specifically provided, the term does not include the Department of Legal Affairs, the Department of Agriculture and Consumer Services, or the Department of Financial Services.

(36)~~(28)~~ "SUNCOM Network" means the state enterprise telecommunications system that provides all methods of electronic or optical telecommunications beyond a single building or contiguous building complex and used by entities authorized as network users under this part.

(37)~~(29)~~ "Telecommunications" means the science and technology of communication at a distance, including electronic systems used in the transmission or reception of information.

(38)~~(30)~~ "Threat" means any circumstance or event that has the potential to adversely impact a state agency's operations or assets through an information system via unauthorized access, destruction, disclosure, or modification of information or denial of service.

(39)~~(31)~~ "Variance" means a calculated value that illustrates how far positive or negative a projection has deviated when measured against documented estimates within a

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project plan.

Section 3. Section 282.0051, Florida Statutes, is amended to read:

282.0051 Florida Digital Service ~~Department of Management Services; powers, duties, and functions~~.—There is established the Florida Digital Service within the department to create innovative solutions that securely modernize state government, achieve value through digital transformation and interoperability, and fully support the cloud-first policy as specified in s. 282.206.

(1) The Florida Digital Service ~~department~~ shall have the following powers, duties, and functions:

(a)~~(1)~~ Develop and publish information technology policy for the management of the state's information technology resources.

(b)~~(2)~~ Establish and publish information technology architecture standards to provide for the most efficient use of ~~the state's~~ information technology resources and to ensure compatibility and alignment with the needs of state agencies. The Florida Digital Service ~~department~~ shall assist state agencies in complying with the standards.

(c)~~(3)~~ Establish project management and oversight standards with which state agencies must comply when implementing projects that have an information technology component ~~projects~~. The Florida Digital Service ~~department~~ shall provide training opportunities to state agencies to assist in the adoption of the project management and oversight standards. To support data-driven decision making, the standards must include, but are not limited to:


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1.~~(a)~~ Performance measurements and metrics that objectively reflect the status of a project with an information technology component ~~project~~ based on a defined and documented project scope, cost, and schedule.

2.~~(b)~~ Methodologies for calculating acceptable variances in the projected versus actual scope, schedule, or cost of a project with an information technology component ~~project~~.

3.~~(c)~~ Reporting requirements, including requirements designed to alert all defined stakeholders that a project with an information technology component ~~project~~ has exceeded acceptable variances defined and documented in a project plan.

4.~~(d)~~ Content, format, and frequency of project updates.

(d)~~(4)~~ Perform project oversight on all state agency ~~information technology~~ projects that have an information technology component with a total project cost ~~costs~~ of $10 million or more and that are funded in the General Appropriations Act or any other law. The Florida Digital Service ~~department~~ shall report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any project with an information technology component ~~project~~ that the Florida Digital Service ~~department~~ identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in a project plan. The report must include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project, and a recommendation for corrective actions required, including suspension or termination of the project. The Florida Digital Service shall establish a process for state agencies to apply for an exception to the


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requirements of this paragraph for a specific project with an information technology component.

(e) ~~(5)~~ Identify opportunities for standardization and consolidation of information technology services that support interoperability and the cloud-first policy as specified in s. 282.206, business functions and operations, including administrative functions such as purchasing, accounting and reporting, cash management, and personnel, and that are common across state agencies. The Florida Digital Service ~~department~~ shall biennially on April 1 provide recommendations for standardization and consolidation to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(f) ~~(6)~~ Establish best practices for the procurement of information technology products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services.

(g) ~~(7)~~ Develop standards for information technology reports and updates, including, but not limited to, operational work plans, project spend plans, and project status reports, for use by state agencies.

(h) ~~(8)~~ Upon request, assist state agencies in the development of information technology-related legislative budget requests.

(i) ~~(9)~~ Conduct annual assessments of state agencies to determine compliance with all information technology standards and guidelines developed and published by the Florida Digital Service ~~department~~ and provide results of the assessments to the Executive Office of the Governor, the President of the Senate,


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and the Speaker of the House of Representatives.

(j) ~~(10)~~ Provide operational management and oversight of the state data center established pursuant to s. 282.201, which includes:

1. ~~(a)~~ Implementing industry standards and best practices for the state data center's facilities, operations, maintenance, planning, and management processes.

2. ~~(b)~~ Developing and implementing cost-recovery or other payment mechanisms that recover the full direct and indirect cost of services through charges to applicable customer entities. Such cost-recovery or other payment mechanisms must comply with applicable state and federal regulations concerning distribution and use of funds and must ensure that, for any fiscal year, no service or customer entity subsidizes another service or customer entity.

3. ~~(c)~~ Developing and implementing appropriate operating guidelines and procedures necessary for the state data center to perform its duties pursuant to s. 282.201. The guidelines and procedures must comply with applicable state and federal laws, regulations, and policies and conform to generally accepted governmental accounting and auditing standards. The guidelines and procedures must include, but need not be limited to:

a. ~~1.~~ Implementing a consolidated administrative support structure responsible for providing financial management, procurement, transactions involving real or personal property, human resources, and operational support.

b. ~~2.~~ Implementing an annual reconciliation process to ensure that each customer entity is paying for the full direct and indirect cost of each service as determined by the customer

entity's use of each service.

c.~~3.~~ Providing rebates that may be credited against future billings to customer entities when revenues exceed costs.

d.~~4.~~ Requiring customer entities to validate that sufficient funds exist in the appropriate data processing appropriation category or will be transferred into the appropriate data processing appropriation category before implementation of a customer entity's request for a change in the type or level of service provided, if such change results in a net increase to the customer entity's cost for that fiscal year.

e.~~5.~~ By November 15 of each year, providing to the Office of Policy and Budget in the Executive Office of the Governor and to the chairs of the legislative appropriations committees the projected costs of providing data center services for the following fiscal year.

f.~~6.~~ Providing a plan for consideration by the Legislative Budget Commission if the cost of a service is increased for a reason other than a customer entity's request made pursuant to sub-subparagraph d. ~~subparagraph 4.~~ Such a plan is required only if the service cost increase results in a net increase to a customer entity for that fiscal year.

g.~~7.~~ Standardizing and consolidating procurement and contracting practices.

4.~~(d)~~ In collaboration with the Department of Law Enforcement, developing and implementing a process for detecting, reporting, and responding to information technology security incidents, breaches, and threats.

5.~~(e)~~ Adopting rules relating to the operation of the state

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data center, including, but not limited to, budgeting and accounting procedures, cost-recovery or other payment methodologies, and operating procedures.

~~(f) Conducting an annual market analysis to determine whether the state's approach to the provision of data center services is the most effective and cost-efficient manner by which its customer entities can acquire such services, based on federal, state, and local government trends; best practices in service provision; and the acquisition of new and emerging technologies. The results of the market analysis shall assist the state data center in making adjustments to its data center service offerings.~~

(k) ~~(11)~~ Recommend other information technology services that should be designed, delivered, and managed as enterprise information technology services. Recommendations must include the identification of existing information technology resources associated with the services, if existing services must be transferred as a result of being delivered and managed as enterprise information technology services.

(l) ~~(12)~~ In consultation with state agencies, propose a methodology and approach for identifying and collecting both current and planned information technology expenditure data at the state agency level.

(m)1. ~~(13)(a)~~ Notwithstanding any other law, provide project oversight on any project with an information technology component ~~project~~ of the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services which has a total project cost of $25 million or more and which impacts one or more other agencies.


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Such projects with an information technology component ~~projects~~ must also comply with the applicable information technology architecture, project management and oversight, and reporting standards established by the Florida Digital Service ~~department~~. The Florida Digital Service shall establish a process for the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services to apply for an exception to the requirements of this paragraph for a specific project with an information technology component.

2.~~(b)~~ When performing the project oversight function specified in subparagraph 1. ~~paragraph (a)~~, report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any project with an information technology component ~~project~~ that the Florida Digital Service ~~department~~ identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in the project plan. The report shall include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project and a recommendation for corrective actions required, including suspension or termination of the project.

(n)~~(14)~~ If a project with an information technology component ~~project~~ implemented by a state agency must be connected to or otherwise accommodated by an information technology system administered by the Department of Financial Services, the Department of Legal Affairs, or the Department of Agriculture and Consumer Services, consult with these departments regarding the risks and other effects of such projects on their information technology systems and work

cooperatively with these departments regarding the connections, interfaces, timing, or accommodations required to implement such projects.

(o) ~~(15)~~ If adherence to standards or policies adopted by or established pursuant to this section causes conflict with federal regulations or requirements imposed on a state agency and results in adverse action against the state agency or federal funding, work with the state agency to provide alternative standards, policies, or requirements that do not conflict with the federal regulation or requirement. The Florida Digital Service ~~department~~ shall annually report such alternative standards to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(p)1. ~~(16)(a)~~ Establish an information technology policy for all information technology-related state contracts, including state term contracts for information technology commodities, consultant services, and staff augmentation services. The information technology policy must include:

a. ~~1.~~ Identification of the information technology product and service categories to be included in state term contracts.

b. ~~2.~~ Requirements to be included in solicitations for state term contracts.

c. ~~3.~~ Evaluation criteria for the award of information technology-related state term contracts.

d. ~~4.~~ The term of each information technology-related state term contract.

e. ~~5.~~ The maximum number of vendors authorized on each state term contract.

2. ~~(b)~~ Evaluate vendor responses for information technology-


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related state term contract solicitations and invitations to negotiate.

3.~~(c)~~ Answer vendor questions on information technology-related state term contract solicitations.

4.~~(d)~~ Ensure that the information technology policy established pursuant to subparagraph 1. ~~paragraph (a)~~ is included in all solicitations and contracts that are administratively executed by the department.

(q)~~(17)~~ Recommend potential methods for standardizing data across state agencies which will promote interoperability and reduce the collection of duplicative data.

(r)~~(18)~~ Recommend open data technical standards and terminologies for use by state agencies.

(2)(a) The Secretary of Management Services shall appoint a state chief information officer, who shall administer the Florida Digital Service and is included in the Senior Management Service.

(b) The state chief information officer shall appoint a chief data officer, who shall report to the state chief information officer and is included in the Senior Management Service.

(3) The Florida Digital Service shall develop a comprehensive enterprise architecture that:

(a) Recognizes the unique needs of those included within the enterprise that results in the publication of standards, terminologies, and procurement guidelines to facilitate digital interoperability.

(b) Supports the cloud-first policy as specified in s. 282.206.

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(c) Addresses how information technology infrastructure may be modernized to achieve cloud-first objectives.

(4) The Florida Digital Service shall, pursuant to legislative appropriation:

(a) Create and maintain a comprehensive indexed data catalog that lists what data elements are housed within the enterprise and in which legacy system or application these data elements are located.

(b) Develop and publish, in collaboration with the enterprise, a data dictionary for each agency that reflects the nomenclature in the comprehensive indexed data catalog.

(c) Review and document use cases across the enterprise architecture.

(d) Develop and publish standards that support the creation and deployment of application programming interfaces to facilitate integration throughout the enterprise.

(e) Facilitate collaborative analysis of enterprise architecture data to improve service delivery.

(f) Develop plans to provide a testing environment in which any newly developed solution can be tested for compliance within the enterprise architecture and for functionality assurance before deployment.

(g) Publish standards necessary to facilitate a secure ecosystem of data interoperability that is compliant with the enterprise architecture and allows for a qualified entity to access enterprise’s data under the terms of the agreements with the department.

(h) Publishing standards that facilitate the deployment of applications or solutions to existing enterprise obligations in

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a controlled and phased approach, including, but not limited to:

1. Electronic credentials, including Digital licenses, as referenced in s. 322.032.

2. Interoperability that enables supervisors of elections to authenticate voter eligibility in real time at the point of service.

3. The criminal justice database.

4. Motor vehicle insurance cancellation integration between insurers and the Department of Highway Safety and Motor Vehicles.

5. Interoperability solutions between agencies, including, but not limited to, the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, the Department of Elderly Affairs, and the Department of Children and Families.

6. Interoperability solutions to support military members, veterans, and their families.

(5) Pursuant to legislative authorization and subject to appropriation:

(a) The department may procure a credential service provider through a competitive process pursuant to s. 287.057. The terms of the contract developed from such procurement must pay for the value on a per-data-call or subscription basis, and there shall be no cost to the enterprise or law enforcement for using the services provided by the credential service provider.

(b) The department may enter into agreements with qualified entities that have the technological capabilities necessary to integrate with the credential service provider; ensure secure validation and authentication of data; meet usage criteria; and

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agree to terms and conditions, privacy policies, and uniform remittance terms relating to the consumption of enterprise data. These agreements must include clear, enforceable, and significant penalties for violations of the agreements.

(c) The department may enter into agreements with qualified entities that meet usage criteria and agree to the enterprise architecture terms of service and privacy policies. These agreements must include clear, enforceable, and significant penalties for violations of the agreements.

(d) The terms of the agreements between the department, the credential service provider and the qualified entities shall be based on the per-data-call or subscription charges to validate and authenticate and allow the department to recover any state costs for implementing and administering a solution. Credential service provider and qualifying entity revenues may not be derived from any other transactions that generate revenue for the enterprise outside of the per-data-call or subscription charges.

(e) All revenues generated from the agreements with the credential service provider and qualified entities shall be remitted to the department, and the department shall deposit these revenues into the Department of Management Services Operating Trust Fund for distribution pursuant to a legislative appropriation and department agreements with the credential service provider and qualified entities.

(f) Upon the signing of the agreement and the enterprise architecture terms of service and privacy policies with a qualified entity the department shall provide to the qualified entity, as applicable, appropriate access to enterprise data to


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facilitate authorized integrations to collaboratively solve enterprise use cases.

(6) The Florida Digital Service may develop a process to:

(a) Receive written notice from the state agencies within the enterprise of any planned or existing procurement of an information technology project that is subject to governance by the enterprise architecture.

(b) Intervene in any planned procurement by a state agency so that the procurement complies with the enterprise architecture.

(c) Report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on any information technology project within the judicial branch that does not comply with the enterprise architecture.

(7) ~~(19)~~ The Florida Digital Service may adopt rules to administer this section.

Section 4. Section 282.00515, Florida Statutes, is amended to read:

282.00515 Enterprise Architecture Advisory Council ~~Duties of Cabinet Agencies~~. ~~The Department of Legal Affairs, the Department of Financial Services, and the Department of Agriculture and Consumer Services shall adopt the standards established in s. 282.0051(2), (3), and (7) or adopt alternative standards based on best practices and industry standards, and may contract with the department to provide or perform any of the services and functions described in s. 282.0051 for the Department of Legal Affairs, the Department of Financial Services, or the Department of Agriculture and Consumer~~


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~~Services.~~

(1)(a) The Enterprise Architecture Advisory Council, an advisory council as defined in s. 20.03(7), is established within the Department of Management Services. The council shall comply with the requirements of s. 20.052, except as otherwise provided in this section.

(b) The council shall consist of the following members:

1. Four members appointed by the Governor.

2. One member appointed by the President of the Senate. 3. One member appointed by the Speaker of the House of Representatives.

4. One member appointed by the Chief Justice of the Supreme Court.

5. The director of the Office of Policy and Budget in the Executive Office of the Governor, or the person acting in the director's capacity should the position be vacant.

6. The Secretary of Management Services, or the person acting in the secretary's capacity should the position be vacant.

7. The state chief information officer, or the person acting in the state chief information officer's capacity should the position be vacant.

8. The chief information officer of the Department of Financial Services, or the person acting in the chief information officer's capacity should the position be vacant.

9. The chief information officer of the Department of Legal Affairs, or the person acting in the chief information officer's capacity should the position be vacant.

10. The chief information officer of the Department of

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Agriculture and Consumer Services, or the person acting in the chief information officer's capacity should the position be vacant.

(2)(a) The appointments made by the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court are for terms of 4 years. However, for the purpose of providing staggered terms:

1. The appointments made by the Governor, the President of the Senate, and the Speaker of the House of Representatives are for initial terms of 2 years.

2. The appointment made by the Chief Justice is for an initial term of 3 years.

(b) A vacancy on the council among members appointed under subparagraph (1)(b)1., subparagraph (1)(b)2., subparagraph (1)(b)3., or subparagraph (1)(b)4. shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

(c) The council shall elect a chair from among its members.

(d) The council shall meet at least semiannually, beginning October 1, 2020, to discuss implementation, management, and coordination of the enterprise architecture as defined in s. 282.0041; identify potential issues and threats with specific use cases; and recommend proactive solutions. The council may conduct its meetings through teleconferences or other similar means.

Section 5. Paragraph (a) of subsection (3) of section 282.318, Florida Statutes, is amended to read:

282.318 Security of data and information technology.—

(3) The department is responsible for establishing


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standards and processes consistent with generally accepted best practices for information technology security, to include cybersecurity, and adopting rules that safeguard an agency's data, information, and information technology resources to ensure availability, confidentiality, and integrity and to mitigate risks. The department shall also:

(a) Designate a state chief information security officer who shall be appointed by and report to the state chief information officer of the Florida Digital Service and is in the Senior Management Service. The state chief information security officer must have experience and expertise in security and risk management for communications and information technology resources.

Section 6. Subsection (4) of section 287.0591, Florida Statutes, is amended to read:

287.0591 Information technology.—

(4) If the department issues a competitive solicitation for information technology commodities, consultant services, or staff augmentation contractual services, the Florida Digital Service ~~Division of State Technology~~ within the department shall participate in such solicitations.

Section 7. Paragraph (a) of subsection (3) of section 365.171, Florida Statutes, is amended to read:

365.171 Emergency communications number E911 state plan.—

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

(a) "Office" means the Division of Telecommunications ~~State Technology~~ within the Department of Management Services, as designated by the secretary of the department.

Section 8. Paragraph (s) of subsection (3) of section

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365.172, Florida Statutes, is amended to read:

365.172 Emergency communications number "E911."—

(3) DEFINITIONS.—Only as used in this section and ss. 365.171, 365.173, 365.174, and 365.177, the term:

(s) "Office" means the Division of Telecommunications ~~State Technology~~ within the Department of Management Services, as designated by the secretary of the department.

Section 9. Paragraph (a) of subsection (1) of section 365.173, Florida Statutes, is amended to read:

365.173 Communications Number E911 System Fund.—

(1) REVENUES.—

(a) Revenues derived from the fee levied on subscribers under s. 365.172(8) must be paid by the board into the State Treasury on or before the 15th day of each month. Such moneys must be accounted for in a special fund to be designated as the Emergency Communications Number E911 System Fund, a fund created in the Division of Telecommunications ~~State Technology~~, or other office as designated by the Secretary of Management Services.

Section 10. Subsection (5) of section 943.0415, Florida Statutes, is amended to read:

943.0415 Cybercrime Office.—There is created within the Department of Law Enforcement the Cybercrime Office. The office may:

(5) Consult with the Florida Digital Service ~~Division of State Technology~~ within the Department of Management Services in the adoption of rules relating to the information technology security provisions in s. 282.318.

Section 11. Effective January 1, 2021, section 559.952, Florida Statutes, is created to read:

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559.952 Financial Technology Sandbox.—

(1) SHORT TITLE.—This section may be cited as the "Financial Technology Sandbox."

(2) CREATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—There is created the Financial Technology Sandbox within the Office of Financial Regulation to allow financial technology innovators to test new products and services in a supervised, flexible regulatory sandbox using exceptions of specified general law and waivers of the corresponding rule requirements under defined conditions. The creation of a supervised, flexible regulatory sandbox provides a welcoming business environment for technology innovators and may lead to significant business growth.

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

(a) "Commission" means the Financial Services Commission.

(b) "Consumer" means a person in this state, whether a natural person or a business entity, who purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service made available through the Financial Technology Sandbox.

(c) "Financial product or service" means a product or service related to finance, including securities, consumer credit, or money transmission, which is traditionally subject to general law or rule requirements in the provisions enumerated in paragraph (7)(a) and which is under the jurisdiction of the office.

(d) "Financial Technology Sandbox" means the program created in this section which allows a person to make an innovative financial product or service available to consumers through the provisions enumerated in paragraph (7)(a) during a

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sandbox period through an exception to general laws or and a waiver of rule requirements, or portions thereof, as specified in this section.

(e) "Innovative" means new or emerging technology, or new uses of existing technology, which provides a product, service, business model, or delivery mechanism to the public.

(f) "Office" means, unless the context clearly indicates otherwise, the Office of Financial Regulation.

(g) "Sandbox period" means the period, initially not longer than 24 months, in which the office has:

1. Authorized an innovative financial product or service to be made available to consumers.

2. Granted the person who makes the innovative financial product or service available an exception to general law or a waiver of the corresponding rule requirements, as determined by the office, so that the authorization under subparagraph 1. is possible.

(4) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR APPROVAL.—

(a) Before filing an application to enter the Financial Technology Sandbox, a substantially affected person may seek a declaratory statement pursuant to s. 120.565 regarding the applicability of a statute, rule, or agency order to the petitioner's particular set of circumstances.

(b) Before making an innovative financial product or service available to consumers in the Financial Technology Sandbox, a person must file an application with the office. The commission shall prescribe by rule the form and manner of the application.

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1. In the application, the person must specify the general law or rule requirements for which an exception or waiver is sought and the reasons why these requirements prevent the innovative financial product or service from being made available to consumers.

2. The application must also contain the information specified in paragraph (e).

(c) A business entity filing an application under this section must be a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent or virtual mailbox, in this state.

(d) Before a person applies on behalf of a business entity intending to make an innovative financial product or service available to consumers, the person must obtain the consent of the business entity.

(e) The office shall approve or deny in writing a Financial Technology Sandbox application within 60 days after receiving the completed application. The office and the applicant may jointly agree to extend the time beyond 60 days. Consistent with this section, the office may impose conditions on any approval. In deciding to approve or deny an application, the office must consider each of the following:

1. The nature of the innovative financial product or service proposed to be made available to consumers in the Financial Technology Sandbox, including all relevant technical details.

2. The potential risk to consumers and the methods that will be used to protect consumers and resolve complaints during the sandbox period.


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3. The business plan proposed by the applicant, including a statement regarding the applicant's current and proposed capitalization.

4. Whether the applicant has the necessary personnel, adequate financial and technical expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or service.

5. If any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service has pled no contest to, has been convicted or found guilty of, or is currently under investigation for, fraud, a state or federal securities violation, any property-based offense, or any crime involving moral turpitude or dishonest dealing, their application to the Sandbox will be denied. A plea of no contest, a conviction, or a finding of guilt must be reported under this subparagraph regardless of adjudication.

6. A copy of the disclosures that will be provided to consumers under paragraph (6)(c).

7. The financial responsibility of any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service.

8. Any other factor that the office determines to be relevant.

(f) The office may not approve an application if:

1. The applicant had a prior Financial Technology Sandbox application that was approved and that related to a substantially similar financial product or service; or

2. Any person substantially involved in the development, operation, or management of the applicant's innovative financial

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product or service was substantially involved with another Financial Technology Sandbox applicant whose application was approved and whose application related to a substantially similar financial product or service.

(g) Upon approval of an application, the office shall specify the general law or rule requirements, or portions thereof, for which an exception or rule waiver is granted during the sandbox period and the length of the initial sandbox period, not to exceed 24 months. The office shall post on its website notice of the approval of the application, a summary of the innovative financial product or service, and the contact information of the person making the financial product or service available.

(5) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

(a) A person whose Financial Technology Sandbox application is approved may make an innovative financial product or service available to consumers during the sandbox period.

(b) The office may, on a case-by-case basis and after consultation with the person who makes the financial product or service available to consumers, specify the maximum number of consumers authorized to receive an innovative financial product or service. The office may not authorize more than 15,000 consumers to receive the financial product or service until the person who makes the financial product or service available to consumers has filed the first report required under subsection (8). After the filing of the report, if the person demonstrates adequate financial capitalization, risk management process, and management oversight, the office may authorize up to 25,000 consumers to receive the financial product or service.

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(c)1. Before a consumer purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service through the Financial Technology Sandbox, the person making the financial product or service available must provide a written statement of all of the following to the consumer:

a. The name and contact information of the person making the financial product or service available to consumers.

b. That the financial product or service has been authorized to be made available to consumers for a temporary period by the office, under the laws of this state.

c. That this state does not endorse the financial product or service.

d. That the financial product or service is undergoing testing, may not function as intended, and may entail financial risk.

e. That the person making the financial product or service available to consumers is not immune from civil liability for any losses or damages caused by the financial product or service.

f. The expected end date of the sandbox period.

g. The contact information for the office, and notification that suspected legal violations, complaints, or other comments related to the financial product or service may be submitted to the office.

h. Any other statements or disclosures required by rule of the commission which are necessary to further the purposes of this section.

2. The written statement must contain an acknowledgment

from the consumer, which must be retained for the duration of the sandbox period by the person making the financial product or service available.

(d) The office may enter into an agreement with a state, federal, or foreign regulatory agency to allow persons:

1. Who make an innovative financial product or service available in this state through the Financial Technology Sandbox to make their products or services available in other jurisdictions.

2. Who operate in similar financial technology sandboxes in other jurisdictions to make innovative financial products and services available in this state under the standards of this section.

(e)1. A person whose Financial Technology Sandbox application is approved by the office shall maintain comprehensive records relating to the innovative financial product or service. The person shall keep these records for at least 5 years after the conclusion of the sandbox period. The commission may specify by rule additional records requirements.

2. The office may examine the records maintained under subparagraph 1. at any time, with or without notice.

(6) EXTENSIONS AND CONCLUSION OF SANDBOX PERIOD.—

(a) A person who is authorized to make an innovative financial product or service available to consumers may apply for an extension of the initial sandbox period for up to 12 additional months for a purpose specified in subparagraph (b)1. or subparagraph (b)2. A complete application for an extension must be filed with the office at least 90 days before the conclusion of the initial sandbox period. The office shall


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approve or deny the application for extension in writing at least 35 days before the conclusion of the initial sandbox period. In deciding to approve or deny an application for extension of the sandbox period, the office must, at a minimum, consider the current status of the factors previously considered under paragraph (4)(e).

(b) An application for an extension under paragraph (a) must cite one of the following reasons as the basis for the application and must provide all relevant supporting information that:

1. Amendments to general law or rules are necessary to offer the innovative financial product or service in this state permanently.

2. An application for a license that is required in order to offer the innovative financial product or service in this state permanently has been filed with the office, and approval is pending.

(c) At least 30 days before the conclusion of the initial sandbox period or the extension, whichever is later, a person who makes an innovative financial product or service available shall provide written notification to consumers regarding the conclusion of the initial sandbox period or the extension and may not make the financial product or service available to any new consumers after the conclusion of the initial sandbox period or the extension, whichever is later, until legal authority outside of the Financial Technology Sandbox exists to make the financial product or service available to consumers. After the conclusion of the sandbox period or the extension, whichever is later, the person who makes the innovative financial product or

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service available may:

1. Collect and receive money owed to the person or pay money owed by the person, based on agreements with consumers made before the conclusion of the sandbox period or the extension.

2. Take necessary legal action.

3. Take other actions authorized by commission rule which are not inconsistent with this subsection.

(7) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE REQUIREMENTS.—

(a) Notwithstanding any other provision of law, upon approval of a Financial Technology Sandbox application, the office may grant an applicant a waiver of a requirement, or a portion thereof, which is imposed by rule as authorized by any of the following provisions of general law, if all of the conditions in paragraph (b) are met. If the application is approved for a person who otherwise would be subject to the provisions of chapters 560, 516, 517, 520, or 537, the following provisions shall not be applicable to the approved sandbox participant:

1. Section 560.1105.

2. Section 560.118.

3. Section 560.125, except for s. 560.125(2).

4. Section 560.128.

5. Section 560.1401, except for s. 560.1401(2)-(4).

6. Section 560.141, except for s. 560.141(1)(b)-(d).

7. Section 560.142, except that the office may prorate , the license renewal fees provided in ss. 560.142 and 560.143 for an extension granted under subsection (7).


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8. Section 560.143(2) to the extent necessary for proration of the renewal fee under subparagraph 7.

9. Section 560.205, except for s. 560.205(1) and (3).

10. Section 560.208, except for s. 560.208(3)-(6).

11. Section 560.209, except that the office may modify the net worth, corporate surety bond, and collateral deposit amounts required under s. 560.209. The modified amounts must be in such lower amounts that the office determines to be commensurate with the considerations under paragraph (4)(e) and the maximum number of consumers authorized to receive the financial product or service under this section.

12. Section 516.03, except for the license and investigation fee. The office may prorate the license renewal fees for an extension granted under subsection (8). The office may not waive the evidence of liquid assets of at least $25,000.

13. Section 516.05, except that the office may make an investigation of the facts concerning the applicant's background.

14. Section 516.12.

15. Section 516.19.

16. Section 517.07.

17. Section 517.12.

18. Section 517.121.

19. Section 520.03, except for the application fee. The office may prorate the license renewal fees for an extension granted under subsection (8).

20. Section 520.12.

21. Section 520.25.

22. Section 520.32, except for the application fee. The


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office may prorate the license renewal fees for an extension granted under subsection (8).

23. Section 520.39.

24. Section 520.52, except for the application fee. The office may prorate the license renewal fees for an extension granted under subsection (8).

25. Section 520.57.

26. Section 520.63, except for the application fee. The office may prorate the license renewal fees for an extension granted under subsection (8).

27. Section 520.997.

28. Section 520.98.

29. Section 537.004, except for s. 537.004(2) and (5). The office may prorate the license renewal fees for an extension granted under subsection (7).

30. Section 537.005, except that the office may modify the corporate surety bond amount required by s. 537.005. The modified amount must be in such lower amount that the office determines to be commensurate with the considerations under paragraph (4) (e) and the maximum number of consumers authorized to receive the product or service under this section.

31. Section 537.007.

32. Section 537.009.

33. Section 537.015.

(b) During a sandbox period, the exceptions granted in paragraph (a) are applicable if all of the following conditions are met:

1. The general law or corresponding rule currently prevents the innovative financial product or service to be made available

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to consumers.

2. The exceptions or rule waivers are not broader than necessary to accomplish the purposes and standards specified in this section, as determined by the office.

3. No provision relating to the liability of an incorporator, director, or officer of the applicant is eligible for a waiver.

4. The other requirements of this section are met.

(9) REPORT.—A person authorized to make an innovative financial product or service available to consumers under this section shall submit a report to the office twice a year as prescribed by commission rule. The report must, at a minimum, include financial reports and the number of consumers who have received the financial product or service.

(10) CONSTRUCTION.—A person whose Financial Technology Sandbox application is approved shall be deemed licensed under the applicable exceptions to general law or waiver of the rule requirements specified under subsection (7), unless the person's authorization to make the financial product or service available to consumers under this section has been revoked or suspended.

(11) VIOLATIONS AND PENALTIES.—

(a) A person who makes an innovative financial product or service available to consumers in the Financial Technology Sandbox is:

1. Not immune from civil damages for acts and omissions relating to this section.

2. Subject to all criminal statutes and any other statute not specifically excepted under section (7)..

(b)1. The office may, by order, revoke or suspend

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authorization granted to a person to make an innovative financial product or service available to consumers if:

a. The person has violated or refused to comply with this section, a rule of the commission, an order of the office, or a condition placed by the office on the approval of the person's Financial Technology Sandbox application;

b. A fact or condition exists that, if it had existed or become known at the time that the Financial Technology Sandbox application was pending, would have warranted denial of the application or the imposition of material conditions;

c. A material error, false statement, misrepresentation, or material omission was made in the Financial Technology Sandbox application; or

d. After consultation with the person, continued testing of the innovative financial product or service would:

(I) Be likely to harm consumers; or

(II) No longer serve the purposes of this section because of the financial or operational failure of the financial product or service.

2. Written notice of a revocation or suspension order made under subparagraph 1. must be served using any means authorized by law. If the notice relates to a suspension, the notice must include any condition or remedial action that the person must complete before the office lifts the suspension.

(c) The office may refer any suspected violation of law to an appropriate state or federal agency for investigation, prosecution, civil penalties, and other appropriate enforcement actions.

(d) If service of process on a person making an innovative


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financial product or service available to consumers in the Financial Technology Sandbox is not feasible, service on the office shall be deemed service on such person.

(12) RULES AND ORDERS.—

(a) The commission shall adopt rules to administer this section.

(b) The office may issue all necessary orders to enforce this section and may enforce the orders in accordance with chapter 120 or in any court of competent jurisdiction. These orders include, but are not limited to, orders for payment of restitution for harm suffered by consumers as a result of an innovative financial product or service.

Section 11. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020.

================ 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 technology innovation; amending s.20.22, F.S.; renaming the division of State Technology within the department of Management Services as the Division of Telecommunications; adding Florida Digital Service to the department; amending s. 282.0041, F.S.; providing definitions; amending s. 282.0051, F.S.; establishing the Florida Digital Service within the department; transferring specified powers, duties, and functions; providing appointments and duties of the

1084 state chief information officer and chief data officer of the
1085 Florida Digital Service; requiring the Florida Digital Service
1086 to develop a comprehensive enterprise architecture; providing
1087 requirements for such enterprise architecture; providing duties
1088 and authorities of the Florida Digital Service; providing duties
1089 of the department under certain circumstances; providing
1090 requirements for procurement terms of contract under certain
1091 circumstances; prohibiting costs to the enterprise and law
1092 enforcement for using services provided by credential service
1093 providers under certain circumstances; providing requirements
1094 for agreements between the department and credential service
1095 providers and qualified entities under certain circumstances;
1096 providing disposition of revenues generated from such agreements
1097 under certain circumstances; providing report requirements;
1098 providing rulemaking authority to the Florida Digital Service;
1099 establishing the Enterprise Architecture Advisory Council;
1100 requiring the council to comply with specified requirements;
1101 providing membership and meeting requirements and duties of the
1102 council; deleting provisions relating to specified duties and
1103 powers of the Department of Legal Affairs, the Department of
1104 Financial Services, and the Department of Agriculture and
1105 Consumer Services; amending ss. 282.318, 287.0591, 365.171,
1106 365.172, 365.173, and 943.0415, F.S.; conforming provisions to
1107 changes made by the act; creating s. 559.952, F.S.; providing a
1108 short title; creating the Financial Technology Sandbox within
1109 the Office of Financial Regulation; defining terms; authorizing
1110 the office to grant exceptions and waivers of specified
1111 financial regulatory requirements to certain applicants offering
1112 certain financial products or services during a sandbox period;


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requiring an application for the program for persons who want to make innovative financial products or services available to consumers; providing application requirements and procedures; providing standards for application approval or denial; requiring the office to perform certain actions upon approval of an application; specifying authorized actions of, limitations on, and disclosure requirements for persons making financial products or services available during a sandbox period; authorizing the office to enter into agreement with certain regulatory agencies for specified purposes; providing recordkeeping requirements; authorizing the office to examine specified records; providing requirements and procedures for applying for extensions and concluding sandbox periods; specifying criteria for granting an extension and a waiver requiring written notification to consumers at the end of an extension or conclusion of the sandbox period; providing acts that persons who make innovative financial products or services available to consumers may and may not engage in at the end of an extension or conclusion of the sandbox period; specifying reporting requirements to the office; providing construction; providing that such persons are not immune from civil damages and are subject to criminal and consumer protection laws; providing penalties; providing for service of process; requiring the Financial Services Commission to adopt rules; authorizing the office to issue orders and enforce such orders through administrative or judicial process; authorizing the office to issue and enforce orders for payment of restitution; providing effective dates.

The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry, and Technology

Subject: Committee Agenda Request

Date: January 21, 2020

I respectfully request that **Senate Bill #1870**, relating to Technological Development , be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/20
Meeting Date

SB 1870
Bill Number (if applicable)

Topic SB 1870: Tech Innovation

Sub 1635976
Amendment Barcode (if applicable)

Name Cody Ferrill

Job Title Deputy Chief of Staff

Address 4050 Esplanade Way
Street

Tallahassee FL 32311
City *State* *Zip*

Phone 850 487 7001

Email Cody.Ferrill@dms.myFlorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Management 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)

2/10/20
Meeting Date

1870
Bill Number (if applicable)

[redacted]
Amendment Barcode (if applicable)

Topic Technological Development

Name Meredith Stanfield

Job Title Director of Legislative & Cabinet Affairs

Address PL 11, The Capitol
Street

Tallahassee FL 32399
City *State* *Zip*

Phone (850) 413-2890

Email Meredith.Stanfield@myFloridaCFO.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Department of Financial 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)

2/10/2020
Meeting Date

1870
Bill Number (if applicable)

Topic Financial Technology Sandbox

Amendment Barcode (if applicable)

Name Abigail Vail

Job Title Chief of Staff

Address 101 E. Gaines St.
Street

Phone 410-9601

TLH
City

FL
State

32399
Zip

Email abby.vail@flofr.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Office of Financial Regulation

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)

2/10
Meeting Date

1870
Bill Number (if applicable)

Topic Tech Development

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address 516 N Adams
Street

TLH
City *State* *Zip*

Phone 224-7173

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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)

2/10/20
Meeting Date

1870
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Tech Development

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.
Street
Tallahassee FL 32303
City *State* *Zip*

Phone 850 556 3121

Email alicevickers@flacpa.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FL Alliance for Consumer Protection

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

COMMITTEE VOTE RECORD

COMMITTEE: Innovation, Industry, and Technology
ITEM: SB 1870
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Monday, February 10, 2020
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Building

FINAL VOTE			2/10/2020 1 Amendment 427788 Hutson		2/10/2020 2 Amendment 635976 Hutson		2/10/2020 3 Motion to have staff prepare technical AMs Benacquisto	
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
	X	Bracy						
X		Bradley						
X		Brandes						
	X	Braynon						
	X	Farmer						
	X	Gibson						
X		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
6	4	**TOTALS**	-	RS	RCS	-	FAV	-
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By the Committee on Innovation, Industry, and Technology; and Senator Hutson

580-03376-20 20201870c1

A bill to be entitled

An act relating to technology innovation; amending s. 20.22, F.S.; renaming the Division of State Technology within the Department of Management Services as the Division of Telecommunications; deleting provisions relating to the appointment of the Division of State Technology's director and qualifications for the state chief information officer; adding the Florida Digital Service to the department; amending s. 282.0041, F.S.; defining terms; amending s. 282.0051, F.S.; establishing the Florida Digital Service within the department; transferring specified powers, duties, and functions of the department to the Florida Digital Service and revising such powers, duties, and functions; providing for appointments of a state chief information officer and a chief data officer and specifying their duties; requiring the Florida Digital Service to develop a comprehensive enterprise architecture; providing requirements for the enterprise architecture; specifying duties of, and authorized actions by, the Florida Digital Service; providing duties of, and authorized actions by, the department; authorizing the Florida Digital Service to adopt rules; amending s. 282.00515, F.S.; establishing the Enterprise Architecture Advisory Council; requiring the council to comply with specified requirements; specifying the composition of the council; providing membership and meeting requirements and duties of the council; deleting provisions

relating to specified duties and powers of the Department of Legal Affairs, the Department of Financial Services, and the Department of Agriculture and Consumer Services; amending ss. 282.318, 287.0591, 365.171, 365.172, 365.173, and 943.0415, F.S.; conforming provisions to changes made by the act; creating s. 559.952, F.S.; providing a short title; creating the Financial Technology Sandbox within the Office of Financial Regulation; defining terms; authorizing the office to grant waivers of specified financial regulatory requirements to certain applicants offering certain financial products or services during a sandbox period; authorizing certain persons to seek a declaratory statement before filing an application for the Financial Technology Sandbox; specifying requirements and procedures for an application to enter the Financial Technology Sandbox; specifying requirements and procedures for the office in reviewing applications; specifying authorized actions of, limitations on, and disclosure requirements for persons making financial products or services available during a sandbox period; authorizing the office to enter into agreement with certain regulatory agencies for specified purposes; providing recordkeeping requirements; authorizing the office to examine specified records; providing requirements and procedures for applying for extensions and concluding sandbox periods; requiring written notification to consumers at the end of an

extension or conclusion of the sandbox period; providing acts that persons who make innovative financial products or services available to consumers may and may not engage in at the end of an extension or conclusion of the sandbox period; specifying state financial regulatory laws that the office may grant exceptions to; specifying reporting requirements to the office; providing construction; providing that such persons are not immune from civil damages and are subject to certain laws; providing penalties; providing for service of process; requiring the Financial Services Commission to adopt rules; authorizing the office to issue orders and enforce them through administrative or judicial process; authorizing the office to issue and enforce orders for payment of restitution; providing effective dates.

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

Section 1. Subsection (2) of section 20.22, Florida Statutes, is amended to read:

20.22 Department of Management Services.—There is created a Department of Management Services.

(2) The ~~following divisions and programs within the~~ Department of Management Services shall consist of the following ~~are established~~:

(a) The Facilities Program.

(b) The Division of Telecommunications ~~State Technology, the director of which is appointed by the secretary of the~~

~~department and shall serve as the state chief information officer. The state chief information officer must be a proven, effective administrator who must have at least 10 years of executive-level experience in the public or private sector, preferably with experience in the development of information technology strategic planning and the development and implementation of fiscal and substantive information technology policy and standards~~.

(c) The Workforce Program.

(d)1. The Support Program.

2. The Federal Property Assistance Program.

(e) The Administration Program.

(f) The Division of Administrative Hearings.

(g) The Division of Retirement.

(h) The Division of State Group Insurance.

(i) The Florida Digital Service.

Section 2. Section 282.0041, Florida Statutes, is amended to read:

282.0041 Definitions.—As used in this chapter, the term:

(1) "Agency assessment" means the amount each customer entity must pay annually for services from the Department of Management Services and includes administrative and data center services costs.

(2) "Agency data center" means agency space containing 10 or more physical or logical servers.

(3) "Breach" has the same meaning as provided in s. 501.171.

(4) "Business continuity plan" means a collection of procedures and information designed to keep an agency's critical

operations running during a period of displacement or interruption of normal operations.

(5) "Cloud computing" has the same meaning as provided in Special Publication 800-145 issued by the National Institute of Standards and Technology.

(6) "Computing facility" or "agency computing facility" means agency space containing fewer than a total of 10 physical or logical servers, but excluding single, logical-server installations that exclusively perform a utility function such as file and print servers.

(7) "Credential service provider" means a provider competitively procured by the department to supply secure identity management and verification services based on open standards to qualified entities.

(8) "Customer entity" means an entity that obtains services from the Department of Management Services.

(9) ~~(8)~~ "Data" means a subset of structured information in a format that allows such information to be electronically retrieved and transmitted.

(10) "Data-call" means an electronic transaction with the credential service provider that verifies the authenticity of a digital identity by querying enterprise data.

(11) ~~(9)~~ "Department" means the Department of Management Services.

(12) ~~(10)~~ "Disaster recovery" means the process, policies, procedures, and infrastructure related to preparing for and implementing recovery or continuation of an agency's vital technology infrastructure after a natural or human-induced disaster.

(13) "Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(14) "Electronic credential" means a digital asset that verifies the identity of a person, organization, application, or device.

(15) "Enterprise" means the collection of state agencies. The term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Financial Services, and the judicial branch.

(16) "Enterprise architecture" means a comprehensive operational framework that contemplates the needs and assets of the enterprise to support interoperability across state government.

(17) ~~(11)~~ "Enterprise information technology service" means an information technology service that is used in all agencies or a subset of agencies and is established in law to be designed, delivered, and managed at the enterprise level.

(18) ~~(12)~~ "Event" means an observable occurrence in a system or network.

(19) ~~(13)~~ "Incident" means a violation or imminent threat of violation, whether such violation is accidental or deliberate, of information technology resources, security, policies, or practices. An imminent threat of violation refers to a situation in which the state agency has a factual basis for believing that a specific incident is about to occur.

(20) ~~(14)~~ "Information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to

automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form.

(21) ~~(15)~~ "Information technology policy" means a definite course or method of action selected from among one or more alternatives that guide and determine present and future decisions.

(22) ~~(16)~~ "Information technology resources" has the same meaning as provided in s. 119.011.

(23) ~~(17)~~ "Information technology security" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the integrity, availability, and confidentiality of data, information, and information technology resources.

(24) "Interoperability" means the technical ability to share and use data across and throughout the enterprise.

(25) ~~(18)~~ "Open data" means data collected or created by a state agency and structured in a way that enables the data to be fully discoverable and usable by the public. The term does not include data that are restricted from public distribution based on federal or state privacy, confidentiality, and security laws and regulations or data for which a state agency is statutorily authorized to assess a fee for its distribution.

(26) ~~(19)~~ "Performance metrics" means the measures of an organization's activities and performance.

(27) ~~(20)~~ "Project" means an endeavor that has a defined start and end point; is undertaken to create or modify a unique

product, service, or result; and has specific objectives that, when attained, signify completion.

(28) ~~(21)~~ "Project oversight" means an independent review and analysis of an information technology project that provides information on the project's scope, completion timeframes, and budget and that identifies and quantifies issues or risks affecting the successful and timely completion of the project.

(29) "Qualified entity" means a public or private entity or individual that enters into a binding agreement with the department, meets usage criteria, agrees to terms and conditions, and is subsequently and prescriptively authorized by the department to access data under the terms of that agreement.

(30) ~~(22)~~ "Risk assessment" means the process of identifying security risks, determining their magnitude, and identifying areas needing safeguards.

(31) ~~(23)~~ "Service level" means the key performance indicators (KPI) of an organization or service which must be regularly performed, monitored, and achieved.

(32) ~~(24)~~ "Service-level agreement" means a written contract between the Department of Management Services and a customer entity which specifies the scope of services provided, service level, the duration of the agreement, the responsible parties, and service costs. A service-level agreement is not a rule pursuant to chapter 120.

(33) ~~(25)~~ "Stakeholder" means a person, group, organization, or state agency involved in or affected by a course of action.

(34) ~~(26)~~ "Standards" means required practices, controls, components, or configurations established by an authority.

(35) ~~(27)~~ "State agency" means any official, officer,

commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. As used in part I of this chapter, except as otherwise specifically provided, the term does not include the Department of Legal Affairs, the Department of Agriculture and Consumer Services, or the Department of Financial Services.

(36) ~~(28)~~ "SUNCOM Network" means the state enterprise telecommunications system that provides all methods of electronic or optical telecommunications beyond a single building or contiguous building complex and used by entities authorized as network users under this part.

(37) ~~(29)~~ "Telecommunications" means the science and technology of communication at a distance, including electronic systems used in the transmission or reception of information.

(38) ~~(30)~~ "Threat" means any circumstance or event that has the potential to adversely impact a state agency's operations or assets through an information system via unauthorized access, destruction, disclosure, or modification of information or denial of service.

(39) ~~(31)~~ "Variance" means a calculated value that illustrates how far positive or negative a projection has deviated when measured against documented estimates within a project plan.

Section 3. Section 282.0051, Florida Statutes, is amended to read:

282.0051 Florida Digital Service ~~Department of Management Services; powers, duties, and functions~~. ~~—~~There is established

the Florida Digital Service within the department to create innovative solutions that securely modernize state government, achieve value through digital transformation and interoperability, and fully support the cloud-first policy as specified in s. 282.206.

(1) The Florida Digital Service ~~department~~ shall have the following powers, duties, and functions:

(a) ~~(1)~~ Develop and publish information technology policy for the management of the state's information technology resources.

(b) ~~(2)~~ Establish and publish information technology architecture standards to provide for the most efficient use of ~~the state's~~ information technology resources and to ensure compatibility and alignment with the needs of state agencies. The Florida Digital Service ~~department~~ shall assist state agencies in complying with the standards.

(c) ~~(3)~~ Establish project management and oversight standards with which state agencies must comply when implementing projects that have an information technology component ~~projects~~. The Florida Digital Service ~~department~~ shall provide training opportunities to state agencies to assist in the adoption of the project management and oversight standards. To support data-driven decisionmaking, the standards must include, but are not limited to:

1. ~~(a)~~ Performance measurements and metrics that objectively reflect the status of a project with an information technology component ~~project~~ based on a defined and documented project scope, cost, and schedule.

2. ~~(b)~~ Methodologies for calculating acceptable variances in

the projected versus actual scope, schedule, or cost of a project with an information technology component ~~project~~.

3.~~(c)~~ Reporting requirements, including requirements designed to alert all defined stakeholders that a project with an information technology component ~~project~~ has exceeded acceptable variances defined and documented in a project plan.

4.~~(d)~~ Content, format, and frequency of project updates.

(d)~~(4)~~ Perform project oversight on all state agency ~~information technology~~ projects that have an information technology component with a total project cost ~~costs~~ of $10 million or more and that are funded in the General Appropriations Act or any other law. The Florida Digital Service ~~department~~ shall report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any project with an information technology component ~~project~~ that the Florida Digital Service ~~department~~ identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in a project plan. The report must include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project, and a recommendation for corrective actions required, including suspension or termination of the project. The Florida Digital Service shall establish a process for state agencies to apply for an exception to the requirements of this paragraph for a specific project with an information technology component.

(e)~~(5)~~ Identify opportunities for standardization and consolidation of information technology services that support interoperability and the cloud-first policy as specified in s.

282.206, business functions and operations, including administrative functions such as purchasing, accounting and reporting, cash management, and personnel, and that are common across state agencies. The Florida Digital Service ~~department~~ shall biennially on April 1 provide recommendations for standardization and consolidation to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(f) ~~(6)~~ Establish best practices for the procurement of information technology products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services.

(g) ~~(7)~~ Develop standards for information technology reports and updates, including, but not limited to, operational work plans, project spend plans, and project status reports, for use by state agencies.

(h) ~~(8)~~ Upon request, assist state agencies in the development of information technology-related legislative budget requests.

(i) ~~(9)~~ Conduct annual assessments of state agencies to determine compliance with all information technology standards and guidelines developed and published by the Florida Digital Service ~~department~~ and provide results of the assessments to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(j) ~~(10)~~ Provide operational management and oversight of the state data center established pursuant to s. 282.201, which includes:

1. ~~(a)~~ Implementing industry standards and best practices

for the state data center's facilities, operations, maintenance, planning, and management processes.

2.~~(b)~~ Developing and implementing cost-recovery or other payment mechanisms that recover the full direct and indirect cost of services through charges to applicable customer entities. Such cost-recovery or other payment mechanisms must comply with applicable state and federal regulations concerning distribution and use of funds and must ensure that, for any fiscal year, no service or customer entity subsidizes another service or customer entity.

3.~~(c)~~ Developing and implementing appropriate operating guidelines and procedures necessary for the state data center to perform its duties pursuant to s. 282.201. The guidelines and procedures must comply with applicable state and federal laws, regulations, and policies and conform to generally accepted governmental accounting and auditing standards. The guidelines and procedures must include, but need not be limited to:

a.~~1.~~ Implementing a consolidated administrative support structure responsible for providing financial management, procurement, transactions involving real or personal property, human resources, and operational support.

b.~~2.~~ Implementing an annual reconciliation process to ensure that each customer entity is paying for the full direct and indirect cost of each service as determined by the customer entity's use of each service.

c.~~3.~~ Providing rebates that may be credited against future billings to customer entities when revenues exceed costs.

d.~~4.~~ Requiring customer entities to validate that sufficient funds exist in the appropriate data processing

appropriation category or will be transferred into the appropriate data processing appropriation category before implementation of a customer entity's request for a change in the type or level of service provided, if such change results in a net increase to the customer entity's cost for that fiscal year.

e.~~5.~~ By November 15 of each year, providing to the Office of Policy and Budget in the Executive Office of the Governor and to the chairs of the legislative appropriations committees the projected costs of providing data center services for the following fiscal year.

f.~~6.~~ Providing a plan for consideration by the Legislative Budget Commission if the cost of a service is increased for a reason other than a customer entity's request made pursuant to sub-subparagraph d. ~~subparagraph 4.~~ Such a plan is required only if the service cost increase results in a net increase to a customer entity for that fiscal year.

g.~~7.~~ Standardizing and consolidating procurement and contracting practices.

4.~~(d)~~ In collaboration with the Department of Law Enforcement, developing and implementing a process for detecting, reporting, and responding to information technology security incidents, breaches, and threats.

5.~~(e)~~ Adopting rules relating to the operation of the state data center, including, but not limited to, budgeting and accounting procedures, cost-recovery or other payment methodologies, and operating procedures.

~~(f) Conducting an annual market analysis to determine whether the state's approach to the provision of data center~~

~~services is the most effective and cost-efficient manner by which its customer entities can acquire such services, based on federal, state, and local government trends; best practices in service provision; and the acquisition of new and emerging technologies. The results of the market analysis shall assist the state data center in making adjustments to its data center service offerings.~~

(k) ~~(11)~~ Recommend other information technology services that should be designed, delivered, and managed as enterprise information technology services. Recommendations must include the identification of existing information technology resources associated with the services, if existing services must be transferred as a result of being delivered and managed as enterprise information technology services.

(l) ~~(12)~~ In consultation with state agencies, propose a methodology and approach for identifying and collecting both current and planned information technology expenditure data at the state agency level.

(m)1. ~~(13)(a)~~ Notwithstanding any other law, provide project oversight on any project with an information technology component ~~project~~ of the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services which has a total project cost of $25 million or more and which impacts one or more other agencies. Such projects with an information technology component ~~projects~~ must also comply with the applicable information technology architecture, project management and oversight, and reporting standards established by the Florida Digital Service ~~department~~. The Florida Digital Service shall establish a process for the

Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services to apply for an exception to the requirements of this paragraph for a specific project with an information technology component.

2.~~(b)~~ When performing the project oversight function specified in subparagraph 1. ~~paragraph (a)~~, report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any project with an information technology component ~~project~~ that the Florida Digital Service ~~department~~ identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in the project plan. The report shall include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project and a recommendation for corrective actions required, including suspension or termination of the project.

(n)~~(14)~~ If a project with an information technology component ~~project~~ implemented by a state agency must be connected to or otherwise accommodated by an information technology system administered by the Department of Financial Services, the Department of Legal Affairs, or the Department of Agriculture and Consumer Services, consult with these departments regarding the risks and other effects of such projects on their information technology systems and work cooperatively with these departments regarding the connections, interfaces, timing, or accommodations required to implement such projects.

(o)~~(15)~~ If adherence to standards or policies adopted by or established pursuant to this section causes conflict with

federal regulations or requirements imposed on a state agency and results in adverse action against the state agency or federal funding, work with the state agency to provide alternative standards, policies, or requirements that do not conflict with the federal regulation or requirement. The Florida Digital Service ~~department~~ shall annually report such alternative standards to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(p)1.~~(16)(a)~~ Establish an information technology policy for all information technology-related state contracts, including state term contracts for information technology commodities, consultant services, and staff augmentation services. The information technology policy must include:

a.~~1.~~ Identification of the information technology product and service categories to be included in state term contracts.

b.~~2.~~ Requirements to be included in solicitations for state term contracts.

c.~~3.~~ Evaluation criteria for the award of information technology-related state term contracts.

d.~~4.~~ The term of each information technology-related state term contract.

e.~~5.~~ The maximum number of vendors authorized on each state term contract.

2.~~(b)~~ Evaluate vendor responses for information technology-related state term contract solicitations and invitations to negotiate.

3.~~(c)~~ Answer vendor questions on information technology-related state term contract solicitations.

4.~~(d)~~ Ensure that the information technology policy

established pursuant to subparagraph 1. ~~paragraph (a)~~ is included in all solicitations and contracts that are administratively executed by the department.

(q) ~~(17)~~ Recommend potential methods for standardizing data across state agencies which will promote interoperability and reduce the collection of duplicative data.

(r) ~~(18)~~ Recommend open data technical standards and terminologies for use by state agencies.

(2)(a) The Secretary of Management Services shall appoint a state chief information officer, who shall administer the Florida Digital Service and is included in the Senior Management Service.

(b) The state chief information officer shall appoint a chief data officer, who shall report to the state chief information officer and is included in the Senior Management Service.

(3) The Florida Digital Service shall develop a comprehensive enterprise architecture that:

(a) Recognizes the unique needs of those included within the enterprise that results in the publication of standards, terminologies, and procurement guidelines to facilitate digital interoperability.

(b) Supports the cloud-first policy as specified in s. 282.206.

(c) Addresses how information technology infrastructure may be modernized to achieve cloud-first objectives.

(4) The Florida Digital Service shall, pursuant to legislative appropriation:

(a) Create and maintain a comprehensive indexed data

catalog that lists what data elements are housed within the enterprise and in which legacy system or application these data elements are located.

(b) Develop and publish, in collaboration with the enterprise, a data dictionary for each agency that reflects the nomenclature in the comprehensive indexed data catalog.

(c) Review and document use cases across the enterprise architecture.

(d) Develop and publish standards that support the creation and deployment of application programming interfaces to facilitate integration throughout the enterprise.

(e) Facilitate collaborative analysis of enterprise architecture data to improve service delivery.

(f) Develop plans to provide a testing environment in which any newly developed solution can be tested for compliance within the enterprise architecture and for functionality assurance before deployment.

(g) Publish standards necessary to facilitate a secure ecosystem of data interoperability that is compliant with the enterprise architecture and allows for a qualified entity to access the enterprise's data under the terms of the agreements with the department.

(h) Publish standards that facilitate the deployment of applications or solutions to existing enterprise obligations in a controlled and phased approach, including, but not limited to:

1. Electronic credentials, including digital licenses as referenced in s. 322.032.

2. Interoperability that enables supervisors of elections to authenticate voter eligibility in real time at the point of

service.

3. The criminal justice database.

4. Motor vehicle insurance cancellation integration between insurers and the Department of Highway Safety and Motor Vehicles.

5. Interoperability solutions between agencies, including, but not limited to, the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, the Department of Elderly Affairs, and the Department of Children and Families.

6. Interoperability solutions to support military members, veterans, and their families.

(5) Pursuant to legislative authorization and subject to appropriation:

(a) The department may procure a credential service provider through a competitive process pursuant to s. 287.057. The terms of the contract developed from such procurement must pay for the value on a per-data-call or subscription basis, and there shall be no cost to the enterprise or law enforcement for using the services provided by the credential service provider.

(b) The department may enter into agreements with qualified entities that have the technological capabilities necessary to integrate with the credential service provider; ensure secure validation and authentication of data; meet usage criteria; and agree to terms and conditions, privacy policies, and uniform remittance terms relating to the consumption of enterprise data. These agreements must include clear, enforceable, and significant penalties for violations of the agreements.

(c) The department may enter into agreements with qualified

entities that meet usage criteria and agree to the enterprise architecture terms of service and privacy policies. These agreements must include clear, enforceable, and significant penalties for violations of the agreements.

(d) The terms of the agreements between the department, the credential service provider, and the qualified entities shall be based on the per-data-call or subscription charges to validate and authenticate and allow the department to recover any state costs for implementing and administering a solution. Credential service provider and qualifying entity revenues may not be derived from any other transactions that generate revenue for the enterprise outside of the per-data-call or subscription charges.

(e) All revenues generated from the agreements with the credential service provider and qualified entities shall be remitted to the department, and the department shall deposit these revenues into the Department of Management Services Operating Trust Fund for distribution pursuant to a legislative appropriation and department agreements with the credential service provider and qualified entities.

(f) Upon the signing of the agreement and the enterprise architecture terms of service and privacy policies with a qualified entity, the department shall provide to the qualified entity, as applicable, appropriate access to enterprise data to facilitate authorized integrations to collaboratively solve enterprise use cases.

(6) The Florida Digital Service may develop a process to:

(a) Receive written notice from the state agencies within the enterprise of any planned or existing procurement of an

information technology project that is subject to governance by the enterprise architecture.

(b) Intervene in any planned procurement by a state agency so that the procurement complies with the enterprise architecture.

(c) Report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on any information technology project within the judicial branch that does not comply with the enterprise architecture.

(7) ~~(19)~~ The Florida Digital Service may adopt rules to administer this section.

Section 4. Section 282.00515, Florida Statutes, is amended to read:

282.00515 Enterprise Architecture Advisory Council ~~Duties of Cabinet agencies~~.—

(1)(a) The Enterprise Architecture Advisory Council, an advisory council as defined in s. 20.03(7), is established within the Department of Management Services. The council shall comply with the requirements of s. 20.052 except as otherwise provided in this section.

(b) The council shall consist of the following members:

1. Four members appointed by the Governor.

2. One member appointed by the President of the Senate.

3. One member appointed by the Speaker of the House of Representatives.

4. One member appointed by the Chief Justice of the Supreme Court.

5. The director of the Office of Policy and Budget in the Executive Office of the Governor, or the person acting in the

director's capacity should the position be vacant.

6. The Secretary of Management Services, or the person acting in the secretary's capacity should the position be vacant.

7. The state chief information officer, or the person acting in the state chief information officer's capacity should the position be vacant.

8. The chief information officer of the Department of Financial Services, or the person acting in the chief information officer's capacity should the position be vacant.

9. The chief information officer of the Department of Legal Affairs, or the person acting in the chief information officer's capacity should the position be vacant.

10. The chief information officer of the Department of Agriculture and Consumer Services, or the person acting in the chief information officer's capacity should the position be vacant.

(2)(a) The appointments made by the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court are for terms of 4 years. However, for the purpose of providing staggered terms:

1. The appointments made by the Governor, the President of the Senate, and the Speaker of the House of Representatives are for initial terms of 2 years.

2. The appointment made by the Chief Justice is for an initial term of 3 years.

(b) A vacancy on the council among members appointed under subparagraph (1)(b)1., subparagraph (1)(b)2., subparagraph (1)(b)3., or subparagraph (1)(b)4. shall be filled in the same

manner as the original appointment for the remainder of the unexpired term.

(c) The council shall elect a chair from among its members.

(d) The council shall meet at least semiannually, beginning October 1, 2020, to discuss implementation, management, and coordination of the enterprise architecture as defined in s. 282.0041; identify potential issues and threats with specific use cases; and recommend proactive solutions. The council may conduct its meetings through teleconferences or other similar means ~~The Department of Legal Affairs, the Department of Financial Services, and the Department of Agriculture and Consumer Services shall adopt the standards established in s. 282.0051(2), (3), and (7) or adopt alternative standards based on best practices and industry standards, and may contract with the department to provide or perform any of the services and functions described in s. 282.0051 for the Department of Legal Affairs, the Department of Financial Services, or the Department of Agriculture and Consumer Services~~.

Section 5. Paragraph (a) of subsection (3) of section 282.318, Florida Statutes, is amended to read:

282.318 Security of data and information technology.—

(3) The department is responsible for establishing standards and processes consistent with generally accepted best practices for information technology security, to include cybersecurity, and adopting rules that safeguard an agency's data, information, and information technology resources to ensure availability, confidentiality, and integrity and to mitigate risks. The department shall also:

(a) Designate a state chief information security officer

who shall be appointed by and report to the state chief information officer of the Florida Digital Service and is in the Senior Management Service. The state chief information security officer must have experience and expertise in security and risk management for communications and information technology resources.

Section 6. Subsection (4) of section 287.0591, Florida Statutes, is amended to read:

287.0591 Information technology.—

(4) If the department issues a competitive solicitation for information technology commodities, consultant services, or staff augmentation contractual services, the Florida Digital Service ~~Division of State Technology~~ within the department shall participate in such solicitations.

Section 7. Paragraph (a) of subsection (3) of section 365.171, Florida Statutes, is amended to read:

365.171 Emergency communications number E911 state plan.—

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

(a) "Office" means the Division of Telecommunications ~~State Technology~~ within the Department of Management Services, as designated by the secretary of the department.

Section 8. Paragraph (s) of subsection (3) of section 365.172, Florida Statutes, is amended to read:

365.172 Emergency communications number "E911."—

(3) DEFINITIONS.—Only as used in this section and ss. 365.171, 365.173, 365.174, and 365.177, the term:

(s) "Office" means the Division of Telecommunications ~~State Technology~~ within the Department of Management Services, as designated by the secretary of the department.

Section 9. Paragraph (a) of subsection (1) of section 365.173, Florida Statutes, is amended to read:

365.173 Communications Number E911 System Fund.—

(1) REVENUES.—

(a) Revenues derived from the fee levied on subscribers under s. 365.172(8) must be paid by the board into the State Treasury on or before the 15th day of each month. Such moneys must be accounted for in a special fund to be designated as the Emergency Communications Number E911 System Fund, a fund created in the Division of Telecommunications ~~State Technology~~, or other office as designated by the Secretary of Management Services.

Section 10. Subsection (5) of section 943.0415, Florida Statutes, is amended to read:

943.0415 Cybercrime Office.—There is created within the Department of Law Enforcement the Cybercrime Office. The office may:

(5) Consult with the Florida Digital Service ~~Division of State Technology~~ within the Department of Management Services in the adoption of rules relating to the information technology security provisions in s. 282.318.

Section 11. Effective January 1, 2021, section 559.952, Florida Statutes, is created to read:

559.952 Financial Technology Sandbox.—

(1) SHORT TITLE.—This section may be cited as the "Financial Technology Sandbox."

(2) CREATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—There is created the Financial Technology Sandbox within the Office of Financial Regulation to allow financial technology innovators to test new products and services in a supervised, flexible

regulatory sandbox using exceptions to specified general law and waivers of the corresponding rule requirements under defined conditions. The creation of a supervised, flexible regulatory sandbox provides a welcoming business environment for technology innovators and may lead to significant business growth.

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

(a) "Commission" means the Financial Services Commission.

(b) "Consumer" means a person in this state, whether a natural person or a business entity, who purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service made available through the Financial Technology Sandbox.

(c) "Financial product or service" means a product or service related to finance, including securities, consumer credit, or money transmission, which is traditionally subject to general law or rule requirements in the provisions enumerated in paragraph (7)(a) and which is under the jurisdiction of the office.

(d) "Financial Technology Sandbox" means the program created in this section which allows a person to make an innovative financial product or service available to consumers through the provisions enumerated in paragraph (7)(a) during a sandbox period through an exception to general laws or a waiver of rule requirements, or portions thereof, as specified in this section.

(e) "Innovative" means new or emerging technology, or new uses of existing technology, which provides a product, service, business model, or delivery mechanism to the public.

(f) "Office" means, unless the context clearly indicates

otherwise, the Office of Financial Regulation.

(g) "Sandbox period" means the period, initially not longer than 24 months, in which the office has:

1. Authorized an innovative financial product or service to be made available to consumers.

2. Granted the person who makes the innovative financial product or service available an exception to general law or a waiver of the corresponding rule requirements, as determined by the office, so that the authorization under subparagraph 1. is possible.

(4) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR APPROVAL.—

(a) Before filing an application to enter the Financial Technology Sandbox, a substantially affected person may seek a declaratory statement pursuant to s. 120.565 regarding the applicability of a statute, rule, or agency order to the petitioner's particular set of circumstances.

(b) Before making an innovative financial product or service available to consumers in the Financial Technology Sandbox, a person must file an application with the office. The commission shall prescribe by rule the form and manner of the application.

1. In the application, the person must specify the general law or rule requirements for which an exception or a waiver is sought and the reasons why these requirements prevent the innovative financial product or service from being made available to consumers.

2. The application must also contain the information specified in paragraph (e).

(c) A business entity filing an application under this section must be a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent or virtual mailbox, in this state.

(d) Before a person applies on behalf of a business entity intending to make an innovative financial product or service available to consumers, the person must obtain the consent of the business entity.

(e) The office shall approve or deny in writing a Financial Technology Sandbox application within 60 days after receiving the completed application. The office and the applicant may jointly agree to extend the time beyond 60 days. Consistent with this section, the office may impose conditions on any approval. In deciding to approve or deny an application, the office must consider each of the following:

1. The nature of the innovative financial product or service proposed to be made available to consumers in the Financial Technology Sandbox, including all relevant technical details.

2. The potential risk to consumers and the methods that will be used to protect consumers and resolve complaints during the sandbox period.

3. The business plan proposed by the applicant, including a statement regarding the applicant's current and proposed capitalization.

4. Whether the applicant has the necessary personnel, adequate financial and technical expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or service.

5. If any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service has pled no contest to, has been convicted or found guilty of, or is currently under investigation for, fraud, a state or federal securities violation, any property-based offense, or any crime involving moral turpitude or dishonest dealing, their application to the Financial Technology Sandbox will be denied. A plea of no contest, a conviction, or a finding of guilt must be reported under this subparagraph regardless of adjudication.

6. A copy of the disclosures that will be provided to consumers under paragraph (6)(c).

7. The financial responsibility of any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service.

8. Any other factor that the office determines to be relevant.

(f) The office may not approve an application if:

1. The applicant had a prior Financial Technology Sandbox application that was approved and that related to a substantially similar financial product or service; or

2. Any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service was substantially involved with another Financial Technology Sandbox applicant whose application was approved and whose application related to a substantially similar financial product or service.

(g) Upon approval of an application, the office shall specify the general law or rule requirements, or portions

thereof, for which an exception or rule waiver is granted during the sandbox period and the length of the initial sandbox period, not to exceed 24 months. The office shall post on its website notice of the approval of the application, a summary of the innovative financial product or service, and the contact information of the person making the financial product or service available.

(5) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

(a) A person whose Financial Technology Sandbox application is approved may make an innovative financial product or service available to consumers during the sandbox period.

(b) The office may, on a case-by-case basis and after consultation with the person who makes the financial product or service available to consumers, specify the maximum number of consumers authorized to receive an innovative financial product or service. The office may not authorize more than 15,000 consumers to receive the financial product or service until the person who makes the financial product or service available to consumers has filed the first report required under subsection (8). After the filing of the report, if the person demonstrates adequate financial capitalization, risk management process, and management oversight, the office may authorize up to 25,000 consumers to receive the financial product or service.

(c)1. Before a consumer purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service through the Financial Technology Sandbox, the person making the financial product or service available must provide a written statement of all of the following to the consumer:

a. The name and contact information of the person making the financial product or service available to consumers.

b. That the financial product or service has been authorized to be made available to consumers for a temporary period by the office, under the laws of this state.

c. That this state does not endorse the financial product or service.

d. That the financial product or service is undergoing testing, may not function as intended, and may entail financial risk.

e. That the person making the financial product or service available to consumers is not immune from civil liability for any losses or damages caused by the financial product or service.

f. The expected end date of the sandbox period.

g. The contact information for the office, and notification that suspected legal violations, complaints, or other comments related to the financial product or service may be submitted to the office.

h. Any other statements or disclosures required by rule of the commission which are necessary to further the purposes of this section.

2. The written statement must contain an acknowledgment from the consumer, which must be retained for the duration of the sandbox period by the person making the financial product or service available.

(d) The office may enter into an agreement with a state, federal, or foreign regulatory agency to allow persons:

1. Who make an innovative financial product or service

available in this state through the Financial Technology Sandbox to make their products or services available in other jurisdictions.

2. Who operate in similar financial technology sandboxes in other jurisdictions to make innovative financial products and services available in this state under the standards of this section.

(e)1. A person whose Financial Technology Sandbox application is approved by the office shall maintain comprehensive records relating to the innovative financial product or service. The person shall keep these records for at least 5 years after the conclusion of the sandbox period. The commission may specify by rule additional records requirements.

2. The office may examine the records maintained under subparagraph 1. at any time, with or without notice.

(6) EXTENSIONS AND CONCLUSION OF SANDBOX PERIOD.—

(a) A person who is authorized to make an innovative financial product or service available to consumers may apply for an extension of the initial sandbox period for up to 12 additional months for a purpose specified in subparagraph (b)1. or subparagraph (b)2. A complete application for an extension must be filed with the office at least 90 days before the conclusion of the initial sandbox period. The office shall approve or deny the application for extension in writing at least 35 days before the conclusion of the initial sandbox period. In deciding to approve or deny an application for extension of the sandbox period, the office must, at a minimum, consider the current status of the factors previously considered under paragraph (4)(e).

(b) An application for an extension under paragraph (a) must cite one of the following reasons as the basis for the application and must provide all relevant supporting information that:

1. Amendments to general law or rules are necessary to offer the innovative financial product or service in this state permanently.

2. An application for a license that is required in order to offer the innovative financial product or service in this state permanently has been filed with the office, and approval is pending.

(c) At least 30 days before the conclusion of the initial sandbox period or the extension, whichever is later, a person who makes an innovative financial product or service available shall provide written notification to consumers regarding the conclusion of the initial sandbox period or the extension and may not make the financial product or service available to any new consumers after the conclusion of the initial sandbox period or the extension, whichever is later, until legal authority outside of the Financial Technology Sandbox exists to make the financial product or service available to consumers. After the conclusion of the sandbox period or the extension, whichever is later, the person who makes the innovative financial product or service available may:

1. Collect and receive money owed to the person or pay money owed by the person, based on agreements with consumers made before the conclusion of the sandbox period or the extension.

2. Take necessary legal action.

3. Take other actions authorized by commission rule which are not inconsistent with this subsection.

(7) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE REQUIREMENTS.—

(a) Notwithstanding any other provision of law, upon approval of a Financial Technology Sandbox application, the office may grant an applicant a waiver of a requirement, or a portion thereof, which is imposed by rule as authorized by any of the following provisions of general law, if all of the conditions in paragraph (b) are met. If the application is approved for a person who otherwise would be subject to the provisions of chapter 560, chapter 516, chapter 517, chapter 520, or chapter 537, the following provisions shall not be applicable to the approved sandbox participant:

1. Section 560.1105.

2. Section 560.118.

3. Section 560.125, except for s. 560.125(2).

4. Section 560.128.

5. Section 560.1401, except for s. 560.1401(2)-(4).

6. Section 560.141, except for s. 560.141(1)(b)-(d).

7. Section 560.142, except that the office may prorate the license renewal fees provided in ss. 560.142 and 560.143 for an extension granted under subsection (6).

8. Section 560.143(2), to the extent necessary for proration of the renewal fee under subparagraph 7.

9. Section 560.205, except for s. 560.205(1) and (3).

10. Section 560.208, except for s. 560.208(3)-(6).

11. Section 560.209, except that the office may modify the net worth, corporate surety bond, and collateral deposit amounts

required under s. 560.209. The modified amounts must be in such lower amounts that the office determines to be commensurate with the considerations under paragraph (4)(e) and the maximum number of consumers authorized to receive the financial product or service under this section.

12. Section 516.03, except for the license and investigation fee. The office may prorate the license renewal fees for an extension granted under subsection (6). The office may not waive the evidence of liquid assets of at least $25,000.

13. Section 516.05, except that the office may make an investigation of the facts concerning the applicant's background.

14. Section 516.12.

15. Section 516.19.

16. Section 517.07.

17. Section 517.12.

18. Section 517.121.

19. Section 520.03, except for the application fee. The office may prorate the license renewal fees for an extension granted under subsection (6).

20. Section 520.12.

21. Section 520.25.

22. Section 520.32, except for the application fee. The office may prorate the license renewal fees for an extension granted under subsection (6).

23. Section 520.39.

24. Section 520.52, except for the application fee. The office may prorate the license renewal fees for an extension granted under subsection (6).

25. Section 520.57.

26. Section 520.63, except for the application fee. The office may prorate the license renewal fees for an extension granted under subsection (6).

27. Section 520.997.

28. Section 520.98.

29. Section 537.004, except for s. 537.004(2) and (5). The office may prorate the license renewal fees for an extension granted under subsection (6).

30. Section 537.005, except that the office may modify the corporate surety bond amount required by s. 537.005. The modified amount must be in such lower amount that the office determines to be commensurate with the considerations under paragraph (4)(e) and the maximum number of consumers authorized to receive the product or service under this section.

31. Section 537.007.

32. Section 537.009.

33. Section 537.015.

(b) During a sandbox period, the exceptions granted in paragraph (a) are applicable if all of the following conditions are met:

1. The general law or corresponding rule currently prevents the innovative financial product or service to be made available to consumers.

2. The exceptions or rule waivers are not broader than necessary to accomplish the purposes and standards specified in this section, as determined by the office.

3. No provision relating to the liability of an incorporator, director, or officer of the applicant is eligible

for a waiver.

4. The other requirements of this section are met.

(8) REPORT.—A person authorized to make an innovative financial product or service available to consumers under this section shall submit a report to the office twice a year as prescribed by commission rule. The report must, at a minimum, include financial reports and the number of consumers who have received the financial product or service.

(9) CONSTRUCTION.—A person whose Financial Technology Sandbox application is approved shall be deemed licensed under the applicable exceptions to general law or waiver of the rule requirements specified under subsection (7), unless the person's authorization to make the financial product or service available to consumers under this section has been revoked or suspended.

(10) VIOLATIONS AND PENALTIES.—

(a) A person who makes an innovative financial product or service available to consumers in the Financial Technology Sandbox is:

1. Not immune from civil damages for acts and omissions relating to this section.

2. Subject to all criminal statutes and any other statute not specifically excepted under subsection (7).

(b)1. The office may, by order, revoke or suspend authorization granted to a person to make an innovative financial product or service available to consumers if:

a. The person has violated or refused to comply with this section, a rule of the commission, an order of the office, or a condition placed by the office on the approval of the person's Financial Technology Sandbox application;

b. A fact or condition exists that, if it had existed or become known at the time that the Financial Technology Sandbox application was pending, would have warranted denial of the application or the imposition of material conditions;

c. A material error, false statement, misrepresentation, or material omission was made in the Financial Technology Sandbox application; or

d. After consultation with the person, continued testing of the innovative financial product or service would:

(I) Be likely to harm consumers; or

(II) No longer serve the purposes of this section because of the financial or operational failure of the financial product or service.

2. Written notice of a revocation or suspension order made under subparagraph 1. must be served using any means authorized by law. If the notice relates to a suspension, the notice must include any condition or remedial action that the person must complete before the office lifts the suspension.

(c) The office may refer any suspected violation of law to an appropriate state or federal agency for investigation, prosecution, civil penalties, and other appropriate enforcement actions.

(d) If service of process on a person making an innovative financial product or service available to consumers in the Financial Technology Sandbox is not feasible, service on the office shall be deemed service on such person.

(11) RULES AND ORDERS.—

(a) The commission shall adopt rules to administer this section.

(b) The office may issue all necessary orders to enforce this section and may enforce the orders in accordance with chapter 120 or in any court of competent jurisdiction. These orders include, but are not limited to, orders for payment of restitution for harm suffered by consumers as a result of an innovative financial product or service.

Section 12. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020.

CourtSmart Tag Report

Room: EL 110 **Case No.:** **Type:**
Caption: Senate Innovation, Industry and Technology Committee **Judge:**

Started: **2/10/2020 1:33:14 PM**
Ends: **2/10/2020 2:28:20 PM** **Length: 00:55:07**

1:33:12 PM Meeting called to order by Chair Simpson
1:33:14 PM Roll call by Lynn Koon
1:33:20 PM Quorum present
1:33:39 PM Pledge of Allegiance
1:34:04 PM Comments from Chair Simpson
1:34:23 PM Chair Simpson stated that SB 1268 and 658 are being TP'd
1:34:38 PM Introduction of Tab 2 by Chair Simpson
1:34:52 PM Explanation of SB 1244, State Workforce Development Boards by Senator Albritton
1:36:09 PM Question from Senator Gibson
1:36:17 PM Response from Senator Albritton
1:37:59 PM Follow-up question from Senator Gibson
1:38:07 PM Response from Senator Albritton
1:39:23 PM Follow-up question from Senator Gibson
1:39:34 PM Response from Senator Albritton
1:41:33 PM Follow-up from Senator Gibson
1:41:39 PM Response from Senator Albritton
1:42:09 PM Nicholas Alvarez, Legislative Affairs Director, Department of Economic Opportunity waives in support
1:42:18 PM Senator Gibson in debate
1:43:01 PM Closure by Senator Albritton
1:43:13 PM Roll call by AA
1:43:16 PM SB 1244 reported favorably
1:43:38 PM Introduction of Tab 3 by Chair Simpson
1:43:51 PM Explanation of SB 776, Florida Retail Estate Appraisal Board by Senator Perry
1:44:14 PM Introduction of Amendment Barcode No. 837646
1:44:32 PM Explanation of Amendment by Senator Gibson
1:44:49 PM Senator Perry in debate on the Amendment
1:45:13 PM Closure waived
1:45:16 PM Amendment adopted
1:45:29 PM Andy Gonzalez, Public Policy Representative, Florida Realtors waives in support
1:45:41 PM Closure waived
1:45:44 PM Roll call by AA
1:45:49 PM CS/SB 776 reported favorably
1:46:16 PM Chair turned over to Senator Benacquisto
1:46:35 PM Introduction of Tab 7 by Chair Benacquisto
1:46:47 PM Explanation of SPB 7052, Office of Public Counsel by Senator Simpson
1:47:39 PM Question from Senator Braynon
1:47:46 PM Response from Senator Simpson
1:48:14 PM Follow-up question from Senator Braynon
1:48:25 PM Response from Senator Simpson
1:48:44 PM Question from Senator Farmer
1:48:49 PM Response from Senator Simpson

1:49:03 PM Speaker Bradley Marshall, Attorney, Earthjustice in opposition
1:51:29 PM Speaker Leighanne Boone, President, ReThink Energy Action Fund in opposition
1:54:40 PM Ken Hayes waives in opposition
1:54:50 PM Karen Woodall, Executive Director, Florida Center for Fiscal & Economic Policy waives in opposition
1:54:57 PM Jonathan Webber, Deputy Director, Florida Conservation Voters waives in opposition
1:55:10 PM Speaker David Cullen, Sierra Club of Florida in opposition
1:55:14 PM Brian Lee, Florida Legislative Director, Food & Water Watch waives in opposition
1:56:00 PM Senator Braynon in debate
1:57:10 PM Senator Farmer in debate
1:58:01 PM Senator Passidomo moves That SPB 7052 be submitted as a Committee Bill
1:58:12 PM Roll call by AA
1:58:15 PM SPB 7052 reported favorably
1:58:39 PM Chair returned to Senator Simpson
1:58:50 PM Introduction of Tab 6 by Chair Simpson
1:59:09 PM Explanation of SB 912, Department of Business and Professional Regulation by Senator Diaz
2:01:19 PM Introduction of Amendment Barcode No. 283054 by Chair Simpson
2:01:29 PM Amendment withdrawn per Chair Simpson
2:01:45 PM Introduction of Amendment Barcode No. 974940 by Chair Simpson
2:01:48 PM Amendment withdrawn per Chair Simpson
2:01:53 PM Introduction Late-filed Amendment Barcode No. 261994 by Chair Simpson
2:01:58 PM Amendment withdrawn per Chair Simpson
2:02:05 PM Colton Madill, Deputy Legislative Affairs Director, Department of Business and Professional Regulation waives in support
2:02:15 PM Closure waived
2:02:19 PM Roll call by AA
2:02:24 PM SB 912 reported favorably
2:02:40 PM Introduction of Tab 5 by Chair Simpson
2:02:58 PM Explanation of SB 1084, Emotional Support Animals by Senator Diaz
2:04:49 PM Question from Senator Gibson
2:04:54 PM Response from Senator Diaz
2:05:56 PM Andrew Rutledge, Florida Realtors waives in support
2:06:03 PM Kelly Mallette, Florida Apartment Association waives in support
2:06:10 PM Christopher Turner, Deputy Director Legislative Affairs, Florida Commission on Human Relations
2:06:52 PM Speaker Travis Moore, Community Associations Institute in support
2:07:22 PM Senator Benacquisto for a point of clarification
2:07:42 PM Closure waived
2:07:45 PM Roll call by AA
2:07:48 PM SB 1084 reported favorably
2:08:05 PM Introduction of Tab 9 by Chair Simpson
2:08:27 PM Explanation of SB 1870, Technological Development by Senator Hutson
2:09:01 PM Introduction of Amendment Barcode No. 427784 and Substitute Amendment 635976 by Chair Simpson
2:09:42 PM Explanation of Amendments by Senator Hutson
2:11:10 PM Cody Farrill, Deputy Chief of Staff, Department of Management Services waives in support of Amendment
2:11:26 PM Closure waived
2:11:29 PM Substitute Amendment adopted
2:11:44 PM Question from Senator Braynon
2:11:49 PM Response from Senator Hutson

2:12:40 PM Follow-up question from Senator Braynon
2:12:46 PM Response from Senator Hutson
2:13:09 PM Additional question from Senator Braynon
2:13:15 PM Response from Senator Hutson
2:14:07 PM Speaker Alice Vickers, Attorney, FL Alliance for Consumer Protection in opposition
2:15:57 PM Brewster Bevis, Senior Vice President, Associated Industries of Florida in support
2:17:00 PM Abigail Vail, Chief of Staff, Office of Financial Regulation waives in support
2:17:12 PM Speaker Meridith Stanfield, Director of Legislative & Cabinet Affairs, Department of Financial Services
2:17:34 PM Senator Hutson in closure
2:17:54 PM Senator Benacquisto moves to allow staff to make technical changes
2:18:54 PM Roll call by AA
2:18:56 PM CS/SB 1870 reported favorably
2:19:15 PM Introduction of Tab 8 by Chair Simpson
2:19:36 PM Explanation of SB 1352, Transportation Companies by Senator Brandes
2:20:27 PM Introduction of Amendment Barcode No.817654 and Substitute Amendment Barcode No. 506848 by Chair Simpson
2:21:15 PM Explanation of Substitute Amendment Barcode No. 506848 by Senator Brandes
2:21:45 PM Introduction of Amendment to Substitute Amendment Barcode No. 184186 by Chair Simpson
2:22:06 PM Explanation of Substitute Amendment to the Amendment by Senator Farmer
2:22:24 PM Senator Brandes accepts the Amendment
2:22:46 PM Closure waived
2:22:49 PM Substitute Amendment as amended is adopted
2:23:14 PM Question from Senator Gibson
2:23:20 PM Response from Senator Brandes
2:23:59 PM Follow-up question from Senator Gibson
2:24:06 PM Response from Senator Brandes
2:24:17 PM Additional question from Senator Gibson
2:24:23 PM Response from Senator Brandes
2:24:49 PM David Ramba, Florida Limousine Association waives in support
2:24:57 PM Megan Sirjane Samples, Public Policy Manager, Southeast waives in support
2:25:03 PM Senator Gibson in debate
2:25:55 PM Senator Brandes in closure
2:26:00 PM Roll call by AA
2:26:28 PM CS/SB 1352 reported favorably
2:26:52 PM Senator Gibson with an introduction
2:27:56 PM Comments from Chair Simpson
2:28:00 PM Senator Benacquisto moves to adjourn, meeting adjourned