

|               |   |   |       |             |                     |                |
|---------------|---|---|-------|-------------|---------------------|----------------|
| <b>Tab 1</b>  | <b>CS/CS/SB 34</b> by <b>GO, JU, Torres</b> ; (Similar to CS/H 06517) Relief of Robert Alan Smith by Orange County                                |   |       |             |                     |                |
| <b>Tab 2</b>  | <b>CS/SB 980</b> by <b>GO, Harrell</b> ; (Similar to CS/H 00845) Public Records/Petition for Certain Protective Injunctions                       |   |       |             |                     |                |
| 199260        | A   | S | WD    | RC, Harrell | btw L.71 - 72:      | 04/10 12:15 PM |
| <b>Tab 3</b>  | <b>CS/SB 354</b> by <b>ED, Montford</b> ; (Similar to CS/H 00213) Immunization Registry   |   |       |             |                     |                |
| <b>Tab 4</b>  | <b>SJR 362</b> by <b>Brandes</b> ; (Similar to CS/CS/H 00249) Abolishing the Constitution Revision Commission                                     |   |       |             |                     |                |
| <b>Tab 5</b>  | <b>SB 530</b> by <b>Brandes (CO-INTRODUCERS) Stewart</b> ; (Similar to CS/CS/H 00595) Alcohol or Drug Overdose Prosecutions                       |   |       |             |                     |                |
| <b>Tab 6</b>  | <b>CS/SB 418</b> by <b>BI, Simpson</b> ; (Compare to CS/CS/H 00997) Essential Health Benefits Under Health Plans                                  |   |       |             |                     |                |
| 789626        | A   | S | L RCS | RC, Simpson | Delete L.67 - 73.   | 04/10 12:48 PM |
| <b>Tab 7</b>  | <b>CS/SB 600</b> by <b>IT, Gibson (CO-INTRODUCERS) Bean</b> ; (Identical to CS/H 00591) Public Records/Meter-derived Data and Billing Information |   |       |             |                     |                |
| <b>Tab 8</b>  | <b>SB 702</b> by <b>Lee (CO-INTRODUCERS) Diaz</b> ; (Similar to H 06041) Qualified Blind Trusts   |   |       |             |                     |                |
| <b>Tab 9</b>  | <b>SB 7032</b> by <b>IS</b> ; (Identical to H 07011) OGSR/Emergency Planning Assistance/Division of Emergency Management                          |   |       |             |                     |                |
| <b>Tab 10</b> | <b>CS/SB 1002</b> by <b>IS, Hutson</b> ; (Similar to CS/H 00341) Motor Vehicles and Railroad Trains   |   |       |             |                     |                |
| <b>Tab 11</b> | <b>CS/SB 1200</b> by <b>JU, Stargel</b> ; (Similar to CS/CS/H 01247) Construction Bonds   |   |       |             |                     |                |
| 328940        | A   | S | RCS   | RC, Stargel | Delete L.88 - 144:  | 04/10 01:02 PM |
| 455976        | A   | S | RCS   | RC, Stargel | Delete L.220 - 277: | 04/10 01:02 PM |
| <b>Tab 12</b> | <b>CS/CS/SB 1666</b> by <b>CA, EN, Flores (CO-INTRODUCERS) Pizzo</b> ; (Compare to CS/H 01221) Vessels  |   |       |             |                     |                |
| 416476        | A   | S | L RCS | RC, Flores  | Delete L.177 - 209: | 04/10 01:18 PM |
| <b>Tab 13</b> | <b>SB 7048</b> by <b>CF</b> ; Disclosure of Confidential Records  |   |       |             |                     |                |
| <b>Tab 14</b> | <b>SB 1128</b> by <b>Diaz</b> ; (Identical to H 00721) Emotional Support Animals  |   |       |             |                     |                |
| 631160        | A   | S | L RCS | RC, Diaz    | Delete L.77:        | 04/10 01:24 PM |

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

**RULES**

**Senator Benacquisto, Chair**  
**Senator Gibson, Vice Chair**

**MEETING DATE:** Wednesday, April 10, 2019  
**TIME:** 10:00 a.m.—12:00 noon  
**PLACE:** Toni Jennings Committee Room, 110 Senate Building

**MEMBERS:** Senator Benacquisto, Chair; Senator Gibson, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Farmer, Flores, Hutson, Lee, Montford, Passidomo, Rodriguez, Simmons, Simpson, Stargel, and Thurston

| TAB | BILL NO. and INTRODUCER  | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS   | COMMITTEE ACTION            |
|-----|--|--|-----------------------------|
| 1   | <b>CS/CS/SB 34</b><br>Governmental Oversight and<br>Accountability / Judiciary / Torres<br>(Similar CS/H 6517) | Relief of Robert Alan Smith by Orange County;<br>Providing for the relief of Robert Alan Smith by<br>Orange County; providing for an appropriation to<br>compensate Mr. Smith for injuries and damages he<br>sustained as a result of the negligence of an<br>employee of Orange County, etc.<br><br>SM<br>JU      03/11/2019 Fav/CS<br>GO      04/02/2019 Fav/CS<br>RC      04/10/2019 Favorable  | Favorable<br>Yeas 13 Nays 1 |
| 2   | <b>CS/SB 980</b><br>Governmental Oversight and<br>Accountability / Harrell<br>(Similar CS/H 845)               | Public Records/Petition for Certain Protective<br>Injunctions; Providing an exemption from public<br>records requirements for any information that can be<br>used to identify a petitioner or respondent in a petition<br>for certain protective injunctions, and any related<br>affidavit, notice of hearing, and temporary injunction,<br>until the respondent has been personally served;<br>providing a statement of public necessity, etc.<br><br>JU      03/04/2019 Favorable<br>GO      03/19/2019 Fav/CS<br>RC      04/10/2019 Favorable   | Favorable<br>Yeas 16 Nays 0 |
| 3   | <b>CS/SB 354</b><br>Education / Montford<br>(Similar CS/H 213)   | Immunization Registry; Revising provisions relating to<br>the communicable disease prevention and control<br>programs under the Department of Health;<br>establishing that a certain student who obtains a<br>vaccination from a Florida college or university<br>student health center may refuse to be included in the<br>immunization registry; revising school-entry health<br>requirements to require students to have a certificate<br>of immunization on file with the department's<br>immunization registry, etc.<br><br>HP      02/19/2019 Favorable<br>ED      03/26/2019 Fav/CS<br>RC      04/10/2019 Favorable | Favorable<br>Yeas 16 Nays 1 |

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, April 10, 2019, 10:00 a.m.—12:00 noon

| TAB | BILL NO. and INTRODUCER  | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS   | COMMITTEE ACTION            |
|-----|--|--|-----------------------------|
| 4   | <b>SJR 362</b><br>Brandes<br>(Similar CS/CS/HJR 249,<br>Compare H 251)                       | Abolishing the Constitution Revision Commission;<br>Proposing amendments to the State Constitution to<br>abolish the Constitution Revision Commission, etc.<br><br>JU 02/04/2019 Favorable<br>GO 02/19/2019 Favorable<br>RC 04/10/2019 Favorable   | Favorable<br>Yeas 15 Nays 1 |
| 5   | <b>SB 530</b><br>Brandes<br>(Similar CS/CS/H 595, Compare<br>CS/S 1334)                      | Alcohol or Drug Overdose Prosecutions; Prohibiting<br>the arrest, charge, prosecution, or penalization under<br>specified provisions of a person acting in good faith<br>who seeks medical assistance for an individual<br>experiencing, or believed to be experiencing, an<br>alcohol-related overdose; prohibiting the arrest,<br>charge, prosecution, or penalization under specified<br>provisions of a person acting in good faith who seeks<br>medical assistance for an individual experiencing, or<br>believed to be experiencing, a drug-related overdose,<br>etc.<br><br>CJ 02/19/2019 Favorable<br>JU 03/04/2019 Favorable<br>RC 04/10/2019 Favorable | Favorable<br>Yeas 16 Nays 0 |
| 6   | <b>CS/SB 418</b><br>Banking and Insurance / Simpson<br>(Compare CS/CS/H 997)                 | Essential Health Benefits Under Health Plans;<br>Requiring the Office of Insurance Regulation to<br>conduct a study evaluating this state's current<br>benchmark plan for essential health benefits under<br>the federal Patient Protection and Affordable Care Act<br>(PPACA) and options for changing the benchmark<br>plan for future plan years; requiring the office, in<br>conducting the study, to consider plans and certain<br>benefits used by other states and compare costs with<br>those of this state, etc.<br><br>BI 03/25/2019 Fav/CS<br>HP 04/01/2019 Favorable<br>RC 04/10/2019 Fav/CS   | Fav/CS<br>Yeas 16 Nays 1    |
| 7   | <b>CS/SB 600</b><br>Innovation, Industry, and<br>Technology / Gibson<br>(Identical CS/H 591) | Public Records/Meter-derived Data and Billing<br>Information; Exempting from public records<br>requirements customer meter-derived data and billing<br>information in increments of less than one billing cycle<br>which is held by certain utilities; providing a statement<br>of public necessity, etc.<br><br>IT 03/06/2019 Fav/CS<br>GO 04/02/2019 Favorable<br>RC 04/10/2019 Favorable  | Favorable<br>Yeas 16 Nays 0 |

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, April 10, 2019, 10:00 a.m.—12:00 noon

| TAB | BILL NO. and INTRODUCER  | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS  | COMMITTEE ACTION            |
|-----|--|---|-----------------------------|
| 8   | <b>SB 702</b><br>Lee<br>(Similar H 6041)   | Qualified Blind Trusts; Repealing provisions relating to qualified blind trusts, etc.<br><br>EE 03/12/2019 Favorable<br>GO 03/26/2019 Favorable<br>RC 04/10/2019 Favorable  | Favorable<br>Yeas 16 Nays 0 |
| 9   | <b>SB 7032</b><br>Infrastructure and Security<br>(Identical H 7011)                | OGSR/Emergency Planning Assistance/Division of Emergency Management; Amending a specified provision which provides an exemption from public records requirements for information furnished by a person or a business to the Division of Emergency Management for emergency planning assistance; removing the scheduled repeal of the exemption, etc.<br><br>GO 03/06/2019 Favorable<br>RC 04/10/2019 Favorable  | Favorable<br>Yeas 16 Nays 0 |
| 10  | <b>CS/SB 1002</b><br>Infrastructure and Security /<br>Hutson<br>(Similar CS/H 341) | Motor Vehicles and Railroad Trains; Revising the definition of the term "railroad train"; requiring that, in the event of a crash involving a railroad train, the collection of certain information be at the discretion of the law enforcement officer having jurisdiction to investigate the crash; specifying that certain persons are not considered passengers for the purpose of making crash reports, etc.<br><br>IS 03/12/2019 Fav/CS<br>CJ 03/25/2019 Favorable<br>RC 04/10/2019 Favorable | Favorable<br>Yeas 16 Nays 0 |
| 11  | <b>CS/SB 1200</b><br>Judiciary / Stargel<br>(Similar CS/CS/H 1247)                 | Construction Bonds; Requiring a notice of nonpayment to be under oath; deeming contractors to be insureds or beneficiaries in relation to bonds for construction contracts; requiring a lienor to serve a notice of nonpayment under oath to specified entities during a certain period of time, etc.<br><br>JU 03/25/2019 Fav/CS<br>CA 04/02/2019 Favorable<br>RC 04/10/2019 Fav/CS  | Fav/CS<br>Yeas 16 Nays 0    |

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, April 10, 2019, 10:00 a.m.—12:00 noon

| TAB | BILL NO. and INTRODUCER  | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS  | COMMITTEE ACTION            |
|-----|--|---|-----------------------------|
| 12  | <b>CS/CS/SB 1666</b><br>Community Affairs / Environment<br>and Natural Resources / Flores<br>(Compare CS/H 1221) | Vessels; Revising boating safety identification requirements for certain persons; directing the Fish and Wildlife Conservation Commission to conduct, contingent upon appropriation, a specified study of the impacts of long-term stored vessels and certain anchored and moored vessels on local communities and the state and to submit a report to the Governor and Legislature within a specified timeframe; authorizing certain counties to create no-discharge zones; specifying the fines for violations related to no-discharge zones, etc.<br><br>EN 03/26/2019 Fav/CS<br>CA 04/02/2019 Fav/CS<br>RC 04/10/2019 Fav/CS  | Fav/CS<br>Yeas 17 Nays 0    |
| 13  | <b>SB 7048</b><br>Children, Families, and Elder<br>Affairs<br>(Compare CS/S 1418)                                | Disclosure of Confidential Records; Requiring service providers to disclose information from a clinical record under certain circumstances relating to threats to cause seriously bodily injury or death; requiring, rather than authorizing, psychiatrists to disclose certain patient communications for purposes of notifying potential victims and law enforcement agencies of certain threats; requiring, rather than authorizing, psychologists to disclose certain patient and client communications for purposes of notifying potential victims and law enforcement agencies of certain threats; providing psychologists with immunity from specified liability and actions under certain circumstances, etc.<br><br>IS 03/20/2019 Favorable<br>RC 04/10/2019 Favorable | Favorable<br>Yeas 16 Nays 0 |
| 14  | <b>SB 1128</b><br>Diaz<br>(Identical H 721)  | Emotional Support Animals; Providing that an individual with a disability who has an emotional support animal or obtains an emotional support animal is entitled to full and equal access to all housing accommodations; prohibiting a housing accommodation from requiring such individual to pay extra compensation for such animal; specifying that an individual with a disability is liable for certain damage done by her or his emotional support animal, etc.<br><br>AG 03/11/2019 Favorable<br>IT 03/26/2019 Favorable<br>RC 04/10/2019 Fav/CS   | Fav/CS<br>Yeas 15 Nays 0    |

Other Related Meeting Documents



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

**Location**  
302 The Capitol

**Mailing Address**  
404 South Monroe Street  
Tallahassee, Florida 32399-1100  
(850) 487-5237

March 6, 2019

| DATE     | COMM | ACTION           |
|----------|------|------------------|
| 03/06/19 | SM   | Report Submitted |
| 03/11/19 | JU   | <b>Fav/CS</b>    |
| 04/02/19 | GO   | <b>Fav/CS</b>    |
| 04/10/19 | RC   | <b>Favorable</b> |

The Honorable Bill Galvano  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **CS/CS/SB 34** – Governmental Oversight and Accountability Committee;  
Judiciary Committee and Senator Torres  
**HB 6517** – Representative McClure  
Relief of Robert A. Smith

### SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$750,000 FROM ORANGE COUNTY FOR INJURIES AND DAMAGES SUFFERED BY MR. ROBERT A. SMITH, WHICH WERE PARTIALLY DUE TO THE NEGLIGENT OPERATION OF AN ORANGE COUNTY VAN.

#### CURRENT STATUS:

On February 10, 2017, Ms. Ashley Istler, serving as Senate special master, held a de novo hearing on a previous version of this bill (SB 300). After the hearing, Ms. Istler issued a report containing findings of fact and conclusions of law and concluded that the amount remaining to be paid from the verdict was reasonable. In SB 300 (2017), that amount was \$2,813,536.09 and the associated report is attached as an addendum to this report.

Since that time, the Senate President has reassigned the claim to the undersigned to review records and determine whether any changes have occurred since the hearing that, if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

Since the initial hearing, the undersigned has not received information that would have significantly altered the outcome of the underlying report.

However, updated information provides that the parties have reached a settlement in the amount of \$750,000, as opposed to the \$2,813,536.09 requested in SB 300 (2017) and SB 54 (2018).

OUTSTANDING COSTS  
AND LIENS:

Claimant's counsel has confirmed the following outstanding costs and liens:

- |   |              |
|---|--------------|
| • Legal   | \$72,198.20  |
| • Department of Veterans Affairs                | \$181,560.01 |
| • Center for Medicare and<br>Medicaid Benefits  | \$19,948.66  |
| • Florida Medicaid Casualty<br>Recovery Program | \$42,147.35  |
| • Florida Department of Education               | \$1,954.44   |

RECOMMENDED  
AMENDMENTS:

A correction to the spelling of Mr. Smith's name is recommended. The bill currently reflects a spelling of "Allan" while submitted documents show the middle name spelled as "Alan."

The undersigned also recommends removing the intent language related to extinguishment or waiver of related liens. Intent language would not require the action to occur. Additionally, state and federal liens are involved in this matter and the State does not have the ability to extinguish or waive a federal lien.

Two amendments are attached to this report. The first amendment (357324) only corrects Mr. Smith's middle name. The second amendment (939218) corrects Mr. Smith's middle name and removes the intent language related to extinguishment or waiver of liens.

Respectfully submitted,

Christie M. Letarte  
Senate Special Master

cc: Secretary of the Senate

**CS/CS by Governmental Oversight and Accountability on April 2, 2019:**

The CS clarifies that it is the intent of the Legislature that the state liens related to Mr. Smith's medical care are waived or extinguished.

**CS by Judiciary on March 11, 2019:**

The CS corrects the spelling of Mr. Smith's middle name. It has only one "l," not two.





**THE FLORIDA SENATE**  
**SPECIAL MASTER ON CLAIM BILLS**

***Location***

515 Knott Building

***Mailing Address***

404 South Monroe Street  
Tallahassee, Florida 32399-1100  
(850) 487-5198

| DATE    | COMM | ACTION    |
|---------|------|-----------|
| 1/10/18 | SM   | Favorable |
|         | JU   |           |
|         | GO   |           |
|         | RC   |           |

January 10, 2018

The Honorable Joe Negron  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **SB 54** – Senators Torres and Stewart  
**HB 6517** – by Representative Cortes  
Relief of Robert Allan Smith by Orange County

**SPECIAL MASTER'S FINAL REPORT**

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF \$2,813,536 AGAINST ORANGE COUNTY FOR INJURIES AND DAMAGES SUFFERED BY MR. SMITH WHEN THE MOTORCYCLE HE WAS DRIVING WAS STRUCK BY AN ORANGE COUNTY VEHICLE ON SEPTEMBER 7, 2006.

**FINDINGS OF FACT:**

This claim arises out of a motor vehicle crash involving a motorcycle and a county-owned van which occurred on September 7, 2006, in Orlando, Florida, at the intersection of DePauw Avenue and Orlando Street. The intersection has a stop sign posted for vehicles traveling on Orlando Street. There is no stop sign on DePauw Avenue, which is a residential cross-street. The speed limit on both streets is 25 miles per hour.

**The Accident**

The accident occurred at approximately 1:43 p.m. Mr. Smith was driving his motorcycle from his residence on DePauw Avenue northbound toward Orlando Street. While at the same

time, an Orange County employee, Mr. Godden, was traveling westbound on Orlando Street toward DePauw Avenue. Upon approaching DePauw Avenue, Mr. Godden stopped at the stop sign and looked to the left and to the right on DePauw Avenue. Mr. Smith testified that he visibly saw the van slow down as it approached the stop sign and, therefore, believed that it was safe to travel through the intersection. Mr. Godden proceeded from the stop sign into the intersection and the front of the van collided with the right side of the motorcycle.

At the time of the accident there were two properly parked vehicles on DePauw Avenue; these cars may have obstructed the view of Mr. Godden and Mr. Smith, and possibly caused Mr. Smith to travel down the center of the lane on DePauw Avenue.

The crash was witnessed primarily by one individual, Mr. Dean. Mr. Dean was outside in close proximity to the accident, but his sight of the impact was obstructed by a large tree. Mr. Dean testified that he witnessed the motorcycle traveling northbound on DePauw Avenue and the van stopped on Orlando Street. Mr. Dean testified that he watched as the van proceeded straight into the intersection and witnessed Mr. Smith attempt to avoid the van by swerving into the left side of the road. While his vision was obstructed, Mr. Dean heard the sound of the impact.

The van hit Mr. Smith on the right side, causing his right leg to be partially torn from his body. On impact, Mr. Smith was not ejected from the motorcycle, but rather, remained on the motorcycle. The force of the impact shifted the motorcycle to the left, and the left peg of the motorcycle was damaged and the motorcycle continued forward until it made impact with a curb. Upon impact with the curb, Mr. Smith was ejected from the motorcycle and landed in the grass between the sidewalk and the curb.

Mr. Smith suffered extensive injuries including:

- A right leg above-the-knee amputation;
- A left leg dislocation and fracture;
- Lacerations on his face and right hand;
- A broken pelvis and sacrum; and
- Damage to his rectum and internal organs.

Mr. Smith has incurred over \$550,000 in medical bills, along with the cost of purchasing and maintaining his prosthetic leg. He continues to suffer the effects of his injuries with recurring infections in his leg. Having no health insurance, Mr. Smith's medical bills have been paid by Medicaid or the Department of Veteran Affairs. There are outstanding liens against any award Mr. Smith receives.<sup>1</sup>

At the time of the accident, Mr. Smith was a motorcycle mechanic at Harley Davidson. Since the accident, Mr. Smith received a bachelor's degree in computer design. In August of 2017, Mr. Smith obtained employment doing graphic design work.

#### **Traffic Citation**

Mr. Godden was cited with a violation of s. 316.123(2), F.S., for failure to yield at a stop sign. A violation of which is a noncriminal infraction, punishable as a moving violation. The citation, however, was subsequently dismissed.

#### **Civil Suit**

The case was first tried in November of 2011, but a mistrial was declared because of issues relating to the jury. The case was retried in July of 2012, and the jury returned a verdict in favor of Mr. Smith for damages totaling \$4,814,785.37.

However, the jury found Mr. Smith to be comparatively negligent. Mr. Smith was found to be 33 percent at fault and Mr. Godden to be 67 percent at fault for the accident, so the damages were reduced accordingly. The verdict amount was also reduced due to collateral sources, which left a net verdict of \$2,913,536.09.

Section 768.28, F.S., limits the amount of damages that can be collected from a local government as a result of its negligence or the negligence of its employees. Funds in excess of this limit may only be paid upon approval of a claim bill by the Legislature. Thus, Mr. Smith will not receive the full amount of the judgement unless the Legislature approves this claim bill authorizing the additional payment.

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<sup>1</sup> The Department of Veteran Affairs has a lien in the amount of \$181,560.04 and Medicaid has a lien in the amount of \$42,147.35. Both of which would be satisfied from any award passed by the Legislature.

CLAIMANT'S ARGUMENTS:

Mr. Smith argues that Orange County is liable for the negligence of its employee, Mr. Godden, when he failed to yield at a stop sign in violation of s. 316.123(2), F.S.

RESPONDENT'S  
ARGUMENTS:

Orange County argues that Mr. Smith was driving his motorcycle at speeds in excess of the posted speed limit. Therefore, Orange County argues that the claim bill should be denied because Mr. Smith's comparative fault for the accident was greater than Mr. Godden's.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether Orange County is liable in negligence for damages suffered by the Claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the Special Master prior to, during, and after the hearing.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence: duty, breach, causation, and damages. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010).

Mr. Godden, as an operator of a motor vehicle, had a reasonable duty of care to operate his vehicle at all times with proper care. A motorist's duty to use reasonable care includes a responsibility to enter intersections only upon a determination that it is safe to do so under the prevailing conditions. *Williams v. Davis*, 974 So. 2d 1052, 63 (Fla. 2007).

Section 316.23, F.S. requires drivers after having stopped at a stop sign to yield the right-of-way to any vehicle which is approaching so closely as to constitute an immediate hazard during the time when the driver is moving across or within the intersection. While a violation of a statute governing motor vehicles does not constitute negligence per se, it does constitute prima facie evidence of negligence. *Gudath v. Culp Lumber Co.*, 81 So. 2d 742, 53 (Fla. 1955).

Where a statute governing motor vehicles prohibits specific conduct that likely will cause harm to others and the same conduct is alleged in a civil action as negligent conduct causing injury to another, the statute becomes a minimum standard of care as to that conduct, and a violation of such constitutes some evidence of negligence. *Estate of Wallace v. Fisher*, 567 So. 2d 505 (Fla. 5th DCA 1990).

Mr. Godden was acting within the course and scope of his employment with Orange County at the time of the accident. Orange County, as the employer of Mr. Godden, is liable for his negligent actions. See *Mercury Motors Express v. Smith*, 393 So. 2d 545, 549 (Fla. 1981).

Based on a preponderance of the evidence, it is established that Mr. Godden breached his duty to exercise reasonable care by failing to yield the right-of-way after having stopped at the stop sign in violation of s. 316.123(2), F.S. Mr. Godden by accelerating into the intersection before making sure it was safe to proceed breached his duty of care.

Mr. Smith's extensive injuries, including the loss of his right leg, were a natural and direct consequence of Mr. Godden's negligence. See *Railway Exp. Agency v. Brabham*, 62 So. 2d 713 (Fla. 1952). The accident would not have occurred but for Mr. Godden's negligence.

As a result of Mr. Godden's negligence, Mr. Smith suffered bodily injury and resulting pain and suffering, impairment, disability, mental anguish, and loss of earnings.

### **Collateral Sources**

Under s. 768.76, F.S., damages owed by a tortfeasor can be reduced by the amount of collateral sources which have been paid to compensate the claimant. In this case, the jury's award was reduced by \$55,638 due to past Social Security Disability Income benefits and by \$325,865.58 due to amounts received by the Florida Department of Education, Medicaid, and the Veteran's Administration.

### **Comparative Negligence**

Section 768.81, F.S., Florida's comparative negligence statute, applies to this case because both Mr. Godden and Mr. Smith were at fault in the accident.

#### *Mr. Godden's Negligence*

A stop sign that is established and maintained by lawful authority at an intersection of a street represents a proclamation of danger and imposes upon the motorist the duty to stop and look before proceeding into the intersection. *Tooley v. Marquillies*, 79 So. 2d 421, 22 (Fla. 1955).

The proximate cause of the accident was Mr. Godden's negligence in proceeding into the intersection in front of Mr. Smith's approaching motorcycle at such a time where it may have been impossible for Mr. Smith to avoid the collision.

*Mr. Smith's Negligence*

Mr. Smith as an operator of a motor vehicle also has the duty to exercise reasonable care. Such duty includes a responsibility to enter intersections only upon a determination that it is safe to do so under the prevailing conditions.

*Williams v. Davis*, 974 So. 2d 1052, 63 (Fla. 2007).

The verdict amount after the reduction of collateral sources and the reduction of \$84,720 in future medical expenses which was agreed to by the parties is \$4,348,561.79. This adjusted verdict amount was further reduced due to the jury's assessment of comparative negligence against Mr. Smith. The jury in the civil suit found Mr. Godden 67 percent at fault and Mr. Smith 33 percent at fault. Therefore, the net verdict is \$2,913,536.09.

Orange County has paid the \$100,000 statutory cap on liability. Mr. Smith requests that the remaining sum of \$2,813,536.09 be approved in this claim bill.

After consideration of all the facts presented in this case, I conclude that the amount of this claim bill is appropriate.

LEGISLATIVE HISTORY:

A claim bill for the relief of Mr. Smith was first filed for the 2017 Legislative Session. The Senate Bill, CS/SB 300, died in the Senate Committee on Community Affairs, and the House Bill, CS/HB 6509, died in Messages.

ATTORNEY FEES:

Mr. Smith's attorney has agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S.

FISCAL IMPACT:

Orange County at the time of the accident maintained a self-insured retention in the amount of \$1,000,000 with a \$10,000,000 excess liability policy. Orange County has stated that if the county is required to pay out any amount of this claim bill, there will be adverse impacts to the county's financial position as the funds would come from charge backs to various departments and, thereby, restrict each department's ability to provide services and conduct programs.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 54 (2018) be reported FAVORABLY.

Respectfully submitted,

Ashley Istler  
Senate Special Master

cc: Secretary of the Senate

By the Committees on Governmental Oversight and Accountability;  
and Judiciary; and Senator Torres

585-03752-19

201934c2

A bill to be entitled

An act for the relief of Robert Alan Smith by Orange County; providing for an appropriation to compensate Mr. Smith for injuries and damages he sustained as a result of the negligence of an employee of Orange County; providing legislative intent regarding certain lien interests held by the state; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, at 1:43 p.m. on September 7, 2006, Robert Alan Smith was driving his motorcycle north on DePauw Avenue, the quiet residential street he lived on in Orlando, within 300 feet of his home, within the 25-mile-per-hour posted speed limit, and with the motorcycle's headlights on in clear, dry weather, and

WHEREAS, as Mr. Smith approached the intersection of DePauw Avenue and Orlando Street, at which stop signs are posted for vehicles traveling on Orlando Street, Orange County employee Lynn Lawrence Godden, who was driving an Orange County work van west on Orlando Street, negligently pulled away from the stop sign, colliding with Mr. Smith, and

WHEREAS, Mr. Smith said he saw the driver of the Orange County van visibly slow down as he approached the stop sign, having observed Mr. Smith approaching on his motorcycle, but that the driver drove through the stop sign and into Mr. Smith's path and Mr. Smith was unable to avoid a collision, and

WHEREAS, the front of the Orange County van struck Mr. Smith, causing severe and life-threatening injuries and necessitating surgical procedures, including a traumatic

Page 1 of 3

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

585-03752-19

201934c2

amputation of his right leg above his knee, and

WHEREAS, Mr. Smith also suffered a badly fractured lower left leg with internal fixation, a broken pelvis and sacrum with internal fixation, and damage to the rectum and internal organs, which required a laparotomy, and

WHEREAS, the Orange County employee testified that he observed Mr. Smith's motorcycle as he approached the intersection, but he erroneously believed that it was heading away from him, although there was no evidence to support this claim, and that he was looking to his right, away from Mr. Smith, when he entered the intersection, and

WHEREAS, the Orange County employee was issued a citation by the Orlando Police Department for failure to yield from a stop sign, and

WHEREAS, after finding for Mr. Smith and against Orange County in a civil jury trial, the jury in the case determined that Mr. Smith's future medical expenses totaled \$2.376 million over 40 years and that his past medical expenses and lost wages totaled \$688,807.37, and awarded him \$1,749,978 in damages for past and future pain and suffering, for a total award of \$4,814,785.37, and

WHEREAS, after the total award was reduced by amounts for comparative negligence and Medicaid and Veterans Administration setoffs, a final judgment was entered against Orange County on November 27, 2012, in the amount of \$2,913,536.09, and

WHEREAS, Orange County has paid Mr. Smith \$100,000 pursuant to the statutory limits of liability set forth in s. 768.28, Florida Statutes, which were in effect at the time Mr. Smith's claim arose, leaving a remaining unpaid balance of

Page 2 of 3

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



585-03752-19

201934c2

59 \$2,813,536.09, NOW, THEREFORE,

60  
61 Be It Enacted by the Legislature of the State of Florida:

62  
63 Section 1. The facts stated in the preamble to this act are  
64 found and declared to be true.

65 Section 2. Orange County is authorized and directed to  
66 appropriate from funds not otherwise encumbered and to draw a  
67 warrant in the sum of \$750,000 payable to Robert Alan Smith as  
68 compensation for injuries and damages he sustained as a result  
69 of the negligence of an employee of Orange County.

70 Section 3. It is the intent of the Legislature that the  
71 lien interests of the State of Florida relating to the claim of  
72 Robert Alan Smith for the treatment and care of Robert Alan  
73 Smith, excluding the federal portion of any liens, are hereby  
74 waived or extinguished.

75 Section 4. The amount paid by Orange County pursuant to s.  
76 768.28, Florida Statutes, and the amount awarded under this act  
77 are intended to provide the sole compensation for all present  
78 and future claims arising out of the factual situation described  
79 in this act which resulted in injuries and damages to Robert  
80 Alan Smith. Of the amount awarded under this act, the total  
81 amount paid for attorney fees may not exceed \$150,000, the total  
82 amount paid for lobbying fees may not exceed \$37,500, and the  
83 total amount paid for costs and other similar expenses relating  
84 to this claim may not exceed \$71,511.15.

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Commerce and Tourism, *Vice Chair*  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Children, Families, and Elder Affairs  
Governmental Oversight and Accountability  
Military and Veterans Affairs and Space

### JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining

SENATOR VICTOR M. TORRES, JR.  
15th District

March 14, 2019

Lizbeth Benacquisto, Chair  
Committee on Rules  
404 S. Monroe Street  
Tallahassee, FL 32399

Dear Chair Benacquisto:

Please accept this letter as a formal request to schedule SB 34, a claims bill for Relief of Robert Alan Smith by Orange County, for the next available meeting of the Committee on Rules. Please let me know if you have any questions or need additional information. Thank you, in advance, for your favorable consideration of this request.

Respectfully,

A handwritten signature in black ink, appearing to read "Victor M. Torres, Jr.", with a stylized flourish at the end.

Victor M. Torres, Jr.  
State Senator  
District 15

c: John Phelps, Staff Director, Committee on Rules  
Matthew Hunter, Legislative Assistant

### REPLY TO:

- ☐ 101 Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (850) 410-4817
- ☐ 226 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

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

BILL GALVANO  
President of the Senate

DAVID SIMMONS  
President Pro Tempore

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 980

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Harrell

SUBJECT: Public Records/Petition for Certain Protective Injunctions

DATE: April 9, 2019

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

| ANALYST    | STAFF DIRECTOR | REFERENCE | ACTION           |
|------------|----------------|-----------|------------------|
| 1. Tulloch | Cibula         | JU        | <b>Favorable</b> |
| 2. Hackett | McVane         | GO        | <b>Fav/CS</b>    |
| 3. Tulloch | Phelps         | RC        | <b>Favorable</b> |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 980 creates a public records exemption that temporarily blocks public access to any information that can be used to identify a petitioner or respondent in a petition for a protective injunction alleging domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking filed with the court. The information will be confidential and exempt only until the respondent, i.e., alleged batterer or stalker, is served by a law enforcement officer with a copy of the petition, the notice of hearing, and copies of any affidavits or temporary injunctions.

The bill provides that the temporary exemption is a public necessity as it will ensure the physical safety of alleged victims and their families from retaliation by an abuser, as well as the physical safety of the law enforcement officers serving these petitions.

The bill takes effect July 1, 2019.

**II. Present Situation:**

**Public Records Law**

Article I, section 24 of the Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer, or employee of the state, including all three

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.<sup>3</sup> The Public Records Act states that

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>4</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>5</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>6</sup>

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

Only the Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>10</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>11</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>12</sup>

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

<sup>3</sup> Public records laws are found throughout the Florida Statutes.

<sup>4</sup> Section 119.01(1), F.S.

<sup>5</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>7</sup> Section 119.07(1)(a), F.S.

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> *Id.*

<sup>11</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>12</sup> FLA. CONST., art. I, s. 24(c).

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>13</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>14</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,<sup>15</sup> with specified exceptions.<sup>16</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>17</sup> The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.<sup>18</sup>

### **Public Records and the Judicial Branch**

The Public Records Act does not apply to judicial records.<sup>19</sup> As a coequal branch of government, the judicial branch “is not an ‘agency’ subject to the supervision or control by another coequal branch of government.”<sup>20</sup>

However, the judicial branch is required to maintain access to public records and court proceedings pursuant to article 1, section 24 of the Florida Constitution.<sup>21</sup> To meet its

<sup>13</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

<sup>14</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

<sup>15</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

<sup>16</sup> Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>17</sup> Section 119.15(3), F.S.

<sup>18</sup> Section 119.15(6)(b), F.S.

<sup>19</sup> *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). *See also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). Likewise, the Public Records Act does not apply to the Legislature. Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

<sup>20</sup> *Times Pub. Co. v. Ake*, 645 So. 2d 1003, 1004 (Fla. 2d DCA 1994), *approved*, 660 So. 2d 255 (Fla. 1995). *See also* FLA. CONST., art. II, s. 3 (providing for the separation of powers between the executive, judicial, and legislative branches; stating “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”). *See also* Florida Attorney General, GOVERNMENT-IN-THE-SUNSHINE MANUAL, A REFERENCE FOR COMPLIANCE WITH FLORIDA’S PUBLIC RECORDS AND OPEN MEETINGS LAWS, *Judiciary* at 10-11, (Vol. 39, 2017 Ed.), available at [http://myfloridalegal.com/webfiles.nsf/wf/mnos-akbs9l/\\$file/2017+sunshine+law+manual.pdf](http://myfloridalegal.com/webfiles.nsf/wf/mnos-akbs9l/$file/2017+sunshine+law+manual.pdf).

<sup>21</sup> *See* GOVERNMENT-IN-THE-SUNSHINE MANUAL at 60-65, *supra*. Even before article I, section 24 was passed to require access to public records and meetings by all branches of government, the Florida Supreme Court had recognized that access to court proceedings must be safeguarded as open, “public events.” *See Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 116–19 (Fla. 1988) (“[B]oth civil and criminal court proceedings in Florida are public events and adhere to the well-established common law right of access to court proceedings and records. . . . The reason for openness is basic to our

constitutional obligation, the judicial branch adopted Florida Rule of Judicial Administration 2.420 entitled “Public Access to and Protection of Judicial Branch Records.” In pertinent part, Rule 2.420 provides:

**(a) Scope and Purpose.** Subject to the rulemaking power of the Florida Supreme Court provided by article V, section 2, Florida Constitution, the following rule shall govern public access to and the protection of the records of the judicial branch of government. The public shall have access to all records of the judicial branch of government, except as provided below. . . .

**(c) Confidential and Exempt Records.** The following records of the judicial branch shall be confidential:

- . . . .
- (7) All records made confidential under the Florida and United States Constitutions and Florida and federal law;
  - (8) All records presently deemed to be confidential by court rule, including the Rules for Admission to the Bar, by Florida Statutes, by prior case law of the State of Florida, and by the rules of the Judicial Qualifications Commission;

**(d) Procedures for Determining Confidentiality of Court Records.**

(1) The clerk of the court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of this rule. The following information shall be maintained as confidential:

. . . .

(B) except as provided by court order, information subject to subdivision (c)(7) or (c)(8) of this rule that is currently confidential or exempt from section 119.07, Florida Statutes, and article I, section 24(a) of the Florida Constitution as

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form of government. Public trials are essential to the judicial system’s credibility in a free society.”) (citing *Craig v. Harney*, 331 U.S. 367, 374 (1947); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n. 17 (1980)). See also William A. Buzzett and Deborah K. Kearney, *Commentary to 1992 Addition [of FLA. CONST., art. I, s. 24]*, Fla. Stat. Ann. (Westlaw 1992), noting the following history leading to the passage of article I, section 24:

Florida’s public records and open meetings laws have been a matter of statute since 1967. (Earlier requirements for public records had existed for some time.) Those statutes were not designed to apply to the legislative or judicial branches of state government, but were expressly intended to apply throughout the executive branch and to local governments, including counties, municipalities, and districts. The Supreme Court, the Senate and the House of Representatives each provided some form of access to records and proceedings by rule. In 1978, the Constitution Revision Commission proposed elevating these laws to constitutional status and applying them to records and meetings of the Legislature. That proposal was not adopted.

In *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), the Florida Supreme Court determined that, based on separation of powers requirements, the public records law did not apply to the legislative branch, nor to constitutional officers of the other branches. The decision meant that records of legislators, as well as those of the governor and cabinet officers, at least with respect to the exercise of their constitutional powers, were not subject to the law. The decision caused a stir among the public and particularly the press. Efforts were quickly begun for constitutional change, which concluded with the successful passage of this amendment.

specifically stated in any of the following statutes or as they may be amended or renumbered:

....

(xii) The victim's address in a domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

As evidenced by Rule 2.420, the judiciary may adopt, and has adopted, "legislative statements of policy as part of the rules governing matters within the jurisdiction of the judiciary," including the disclosure or public inspection of court records.<sup>22</sup>

### **Public Record Exemptions for Certain Court Records and Files**

In s. 119.0714(1), F.S., the Legislature has provided that certain information, such as social security numbers<sup>23</sup> and bank account numbers,<sup>24</sup> contained in court records and files should be either exempt or confidential and exempt from the disclosure requirements of the public records laws. Rule of Judicial Administration 2.420 has not expressly adopted all of the statutory public records exemptions contained in s. 119.0714, F.S. However, the rule cross-references s. 119.0714, F.S., in listing social security numbers and bank account numbers as information the clerk of court must keep confidential when it is contained in a court file.<sup>25</sup>

### ***Exemptions Relating to Petitions for Protective Injunctions for Domestic, Repeat, Dating, and Sexual Violence and Stalking***

In 2017, the Legislature amended s. 119.0714(1), F.S., to add a public records exemption for information contained in a petition for a protective injunction that has been dismissed by a court.<sup>26</sup> The exemption is specific to dismissed petitions seeking protective injunctions against

<sup>22</sup> See *Florida Pub. Co. v. State*, 706 So. 2d 54, 56 (Fla. 1st DCA 1998) (citing *Timmons v. Combs*, 608 So.2d 1, 3 (Fla.1992)). See also *Barron*, 531 So. 2d 113, 118 ("closure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed. We find that, under appropriate circumstances, the constitutional right of privacy established in Florida by the adoption of article I, section 23, could form a constitutional basis for closure under (e) or (f). . . . Further, we note that it is generally the content of the subject matter rather than the status of the party that determines whether a privacy interest exists and closure should be permitted. However, a privacy claim may be negated if the content of the subject matter directly concerns a position of public trust held by the individual seeking closure.") (holding that while a court has the power to close a proceeding, because a "strong presumption of openness exists for all court proceedings," the court must consider certain factors before granting a request to close a proceeding).

<sup>23</sup> Section 119.0714(1)(i), F.S.

<sup>24</sup> Section 119.0714(1)(j), F.S.

<sup>25</sup> See also Fla. R. Jud. Admin. 2.420(d)(1)(B)(iii) (recognizing exemption of "[s]ocial Security, bank account, charge, debit, and credit card numbers. § 119.0714(1)(i)-(j), (2)(a)-(e), Fla. Stat. (Unless redaction is requested pursuant to § 119.0714(2), Fla. Stat., this information is exempt only as of January 1, 2012.)).

<sup>26</sup> Section 119.0714(1)(k)1.-2., F.S. For petitions filed on or after July 1, 2017, the exemption is automatic. For petitions filed before July 1, 2017, a request to make the petition exempt must be submitted to the court. *Id.*

domestic violence,<sup>27</sup> repeat violence,<sup>28</sup> dating violence,<sup>29</sup> sexual violence,<sup>30</sup> stalking,<sup>31</sup> and cyberstalking.<sup>32</sup> Although Rule of Judicial Administration 2.420 does not expressly adopt the foregoing legislative exemption, it recognizes that a victim's address may be kept confidential when requested by the petitioner pursuant to s. 741.30(3)(b), F.S.<sup>33</sup> The Family Law Rules of Procedure 12.610 goes further, providing that a victim's address in a petition for a protective injunction against domestic, repeat, dating, or sexual violence and stalking may be kept confidential when requested by the victim in a separate document.

## **Petitions for Protective Injunctions for Domestic, Repeat, Dating, and Sexual Violence, and Stalking or Cyberstalking**

### ***Court Filing and Due Process***

A petition for an injunction for protection against domestic violence,<sup>34</sup> repeat violence,<sup>35</sup> dating violence,<sup>36</sup> sexual violence,<sup>37</sup> stalking, and cyberstalking<sup>38</sup> generally requires the following information:

- The petitioner's name and address.
- The respondent's information, including name and aliases, addresses of home and employment, and a physical description of the respondent.
- Information concerning any other cases open between the parties, including case numbers.

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<sup>27</sup> Section 741.28(2), F.S. Domestic violence is an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member

<sup>28</sup> Section 784.046(1)(b), F.S. Repeat violence constitutes two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.

<sup>29</sup> Section 784.046(1)(d), F.S. Dating violence is violence between individuals who have or have had a continuing and significant romantic relationship.

<sup>30</sup> Section 784.046(1)(c), F.S. Sexual violence is any one incident of sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges were filed, reduced, or dismissed by the state attorney.

<sup>31</sup> Section 784.048(2), F.S. Stalking is defined as a crime committed by a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.

<sup>32</sup> Section 784.048(1)(d), F.S.

<sup>33</sup> The petitioner or victim must file a separate document requesting that his or her address be kept confidential. The petitioner may be in a safe place, such as a shelter or the home of a family member or friend, where disclosing the address not only puts him or herself in danger but others as well. *See* National Association for Court Management, A GUIDE TO DOMESTIC VIOLENCE CASES 25-26 (17th Ed.), available at [https://cms.flcourts.org/core/fileparse.php/531/urlt/Domestic-Violence-Guide2017\\_0.pdf](https://cms.flcourts.org/core/fileparse.php/531/urlt/Domestic-Violence-Guide2017_0.pdf).

<sup>34</sup> Section 741.30(1), F.S.

<sup>35</sup> Section 784.046(2), F.S.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Section 784.0485(1), F.S. Cyberstalking means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose. Aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person. Section 784.048(3), F.S.



- Details concerning the respondent's behavior leading the petitioner to file for a protective injunction.<sup>39</sup>

Upon filing a petition for a protective injunction, the clerk of court will open a court file, assign a case number, and create a docket for the case. The fact that a case has been docketed is generally available online to the public, and the parties (including the petitioner and respondent) will have additional online access to the pleadings filed in the case, including the petition.<sup>40</sup> Even if the petitioner requests that his or her address be kept confidential,<sup>41</sup> once the petition is filed and docketed, the other information in the petition becomes a public record.

The judge who is assigned the petition must hold a hearing at the earliest possible time.<sup>42</sup> If an immediate and present danger of domestic violence appears to exist, a judge may issue a temporary injunction *ex parte* prior to the full hearing.<sup>43</sup> Otherwise, the respondent/alleged batterer or stalker is entitled to due process, including a copy of the petition, any attached affidavits or temporary injunctions, and notice of the full hearing.

Generally, due to the risk of violence, petitions for domestic, repeat, dating, or sexual violence and stalking or cyberstalking must be personally served on the respondent/alleged batterer or stalker by a law enforcement officer.<sup>44</sup>

### ***Safety Risks Associated with Filing for Protective Injunctions***

Filing for an injunction for protection against domestic or other types of violence and stalking is often a victim's first step toward separating from the abuser, but it is also the most dangerous time for a victim. Filing a petition for a protective injunctive places the abuser on notice that the victim is serious about the separation. "Men who have killed their wives state that threats of separation were most often the precipitating events that led to the murder."<sup>45</sup>

In light of today's technology, it is possible that an abuser may know the victim's every move.<sup>46</sup> Many victims report that abusers routinely check on-line or otherwise contact the courthouse to monitor whether the victim has filed for an injunction or a divorce. "The availability of information that the victim intends to leave the abuser prior to service of court documents

<sup>39</sup> See Section 741.30(3)(b), F.S. (providing a form petition for protective injunction against domestic violence); s. 784.046(4)(b), F.S. (providing a form petition for protective injunction against repeat, sexual, or dating violence); s. 784.0485(3)(b), F.S. (providing a form petition for protective injunction against stalking and cyberstalking).

<sup>40</sup> See Florida Courts, *Standards for Access to Electronic Court Records*, 2 (March 2014), available at <https://www.flcourts.org/Resources-Services/Court-Technology/Technology-Standards>.

<sup>41</sup> *Id.*

<sup>42</sup> Sections 741.30(4) and 784.046(5), F.S.

<sup>43</sup> Section 741.30(5)(a), F.S.

<sup>44</sup> See Section 741.30(4), (8)(a)1, F.S.; s. 784.046(5), (8)(a)1, F.S.; s. 784.0485(4), (8)(a)1, F.S.

<sup>45</sup> National Association for Court Management, *A GUIDE TO DOMESTIC VIOLENCE CASES 9-10* (17th Ed.), available at [https://cms.flcourts.org/core/fileparse.php/531/urlt/Domestic-Violence-Guide2017\\_0.pdf](https://cms.flcourts.org/core/fileparse.php/531/urlt/Domestic-Violence-Guide2017_0.pdf). According to the Florida Coalition Against Domestic Violence, FDLE reported that, in 2017, there were 106,797 domestic violence offenses, including 180 domestic homicides. For the first half of 2018, FDLE reported that there were 51,433 domestic violence offenses, including 101 domestic violence homicides. See n. 44, *infra*.

<sup>46</sup> *Id.* at 15.

dramatically decreases the amount of time victims have to take additional affirmative actions to remain safe.”<sup>47</sup>

Additionally, publicly accessible court records give an abuser advance warning of a visit from law enforcement officers. With this information, the abuser may plan to retaliate against those officers, placing them in danger, or attempt to elude being personally served with the petition.<sup>48</sup>

### III. Effect of Proposed Changes:

This bill creates a public records exemption that temporarily blocks public access to a court file containing a petition for a protective injunction alleging domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking.

**Section 1** amends s. 119.0714, F.S., to require that any information that can be used to identify a petitioner or respondent in a petition for a protective injunction be maintained as confidential and exempt until the respondent has been personally served with a copy of the petition, the notice of hearing, and any affidavits or temporary injunctions.

**Section 2** states that it is a public necessity that the information contained in petitions for protective injunctions be maintained as confidential and exempt until the respondent is served with process in order to ensure the physical safety of alleged victims and their families, as well as the law enforcement officers serving such petitions on respondents.

**Section 3** provides that the bill takes effect July 1, 2019.

### IV. Constitutional Issues:

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

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

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

##### ***Vote Requirement***

Because the bill creates a public records exemption, Article I, s. 24(c) of the State Constitution requires passage by a two-thirds vote in each house of the Legislature.

##### ***Public Necessity Statement***

Article I, s. 24(c) of the State Constitution, requires that the exemption be no broader than necessary to accomplish the stated purpose of the law. The public necessity statement

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<sup>47</sup> Florida Coalition Against Domestic Violence, *SB 980 Public Records/Petition for Certain Protective Injunctions* (2019) (on file with Senate Judiciary Committee).

<sup>48</sup> *Id.*

appears to support the public policy for the exemption, and is no broader than the stated purpose of the exemption.

### ***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the safety of those filing for protective injunctions in certain circumstances. This bill exempts only information contained in a petition for a protective injunction alleging domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking filed with the court from the public records requirements, and only until the filing has been served. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

### **First Amendment Commercial Speech**

The bill appears to potentially restrict commercial speech as applied to attorney referral services and attorneys who have a prior, professional relationship with the named respondent. Commercial speech is protected by the First Amendment to the United States Constitution. “Once it is determined that the speech concerns a lawful activity, the government bears the burden of identifying a substantial interest and justifying the challenged restriction.”<sup>49</sup> “Government action restricting commercial speech is subject to the intermediate level of constitutional scrutiny, which asks “whether an imposition on commercial speech (1) promotes a substantial governmental interest; (2) directly advances the interest asserted; and (3) is not more extensive than necessary to serve that interest.”<sup>50</sup>

Here, the bill restricts some lawful commercial speech by restricting attorneys with prior relationships with respondents and attorney referral services from being able to legally access a respondent’s information in order to offer legal services to the respondent through advertising. However, the restriction on this information and the attorney’s or attorney referral service’s ability to use this information for commercial speech is

<sup>49</sup> *Kortum v. Sink*, 54 So. 3d 1012, 1016 (Fla. 1st DCA 2010), *aff’d sub nom. Atwater v. Kortum*, 95 So. 3d 85 (Fla. 2012) (citing *Edenfield v. Fane*, 507 U.S. 761, 770, 113 S.Ct. 1792, 123 L.Ed.2d 543 (1993)). See also *Rubenstein v. Florida Bar*, 72 F. Supp. 3d 1298, 1310–11 (S.D. Fla. 2014) (“Commercial speech that is not false or deceptive and does not concern unlawful activities . . . may be restricted only in the service of a substantial governmental interest, and only through means that directly advance that interest.”) (quoting *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 638 (1985)) (internal quotations omitted).

<sup>50</sup> *Rubenstein v. Florida Bar*, 72 F.Supp. 3d at 1311 (citations omitted).

temporary, lasting only until the petition for a protective injunction has been served on the respondent.<sup>51</sup> Additionally, the temporary restriction on commercial speech appears to be narrowly tailored to promote a substantial government interest: the safety and protection of victims of domestic, repeat, dating, or sexual violence, or stalking and cyberstalking who have filed a petition for injunctive relief.

### **Separation of Powers**

The judicial branch is not subject to the Public Records Act. Florida Rule of Judicial Administration 2.420(c)(7), however, provides that records made confidential by Florida law shall be confidential, with the burden of having such documents treated as confidential within a court file upon the filing party. Additionally, the judicial branch may adopt the public records exemptions passed by the Legislature. To that end, the Florida Supreme Court has indicated that it has no objection to the Florida Steering Committee on Children and Families in the Courts pursuing this bill.<sup>52</sup>

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

The bill affords greater protection to victims of domestic and other violence and stalking from physical violence.

### **C. Government Sector Impact:**

The court system reports that the bill will not have a significant fiscal or operational impact.

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

None.

## **VIII. Statutes Affected:**

This bill substantially amends section 119.0714 of the Florida Statutes.

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<sup>51</sup> If the respondent can never be found to be served, however, the exemption potentially may be open-ended.

<sup>52</sup> See Judicial Branch 2019 Legislative Agenda, *Injunctions Against Violence of Stalking – Public Records*, p. 25 (on file with Senate Judiciary Committee).

**IX. Additional Information:**

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

**CS by Governmental Oversight and Accountability on March 19, 2019:**

The committee substitute narrows the exemption by changing the language describing the information to be exempted from “all information contained within a petition for an injunction...” to “any information that can be used to identify a petitioner or respondent in a petition for an injunction...”

- B. **Amendments:**

None.



199260

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: WD   | . |       |
| 04/10/2019 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Harrell) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 71 and 72  
insert:

Section 3. Immediately following the effective date of this act, the Legislature requests that the Florida Supreme Court expeditiously review the act and consider incorporating information that is made confidential and exempt under the act as specifically designated information under Rule 2.420 (d) (1) (B), Florida Rules of Judicial Administration, to be maintained as confidential without further order of the court.



199260

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

And the title is amended as follows:

Between lines 9 and 10

insert:

requesting the Florida Supreme Court to review the act  
and consider modifying the Florida Rules of Judicial  
Administration to conform to changes made by the act;

By the Committee on Governmental Oversight and Accountability;  
and Senator Harrell

585-03245-19

2019980c1

A bill to be entitled

An act relating to public records; amending s. 119.0714, F.S.; providing an exemption from public records requirements for any information that can be used to identify a petitioner or respondent in a petition for certain protective injunctions, and any related affidavit, notice of hearing, and temporary injunction, until the respondent has been personally served; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (k) of subsection (1) of section 119.0714, Florida Statutes, is amended to read:

119.0714 Court files; court records; official records.—

(1) COURT FILES.—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(k)1. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Page 1 of 3

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

585-03245-19

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2. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued before July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution only upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, or electronic transmission or in person to the clerk of the court. A fee may not be charged for such request.

3. Any information that can be used to identify a petitioner or respondent in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking and any affidavit, notice of hearing, and temporary injunction is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the respondent has been personally served with a copy of the petition for injunction, affidavit, notice of hearing, and temporary injunction.

Section 2. The Legislature finds that it is a public necessity that any information that can be used to identify a petitioner or respondent in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking, and affidavits, notice of

Page 2 of 3

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



585-03245-19

2019980c1

59 hearing, and temporary injunction, be made confidential and  
60 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
61 Article I of the State Constitution. Release of such information  
62 before the respondent has been personally served with a copy of  
63 the petition, affidavits, notice of hearing, and temporary  
64 injunction could significantly threaten the physical safety and  
65 security of persons seeking protection through injunctive  
66 proceedings and their families, and of law enforcement tasked  
67 with serving the petition for injunction, affidavits, notice of  
68 hearing, and temporary injunction on the respondent. The harm  
69 that may result from the release of the information outweighs  
70 any public benefit that might result from public disclosure of  
71 the information.

72 Section 3. This act shall take effect July 1, 2019.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR GAYLE HARRELL**  
25th District

**COMMITTEES:**  
Health Policy, *Chair*  
Appropriations Subcommittee on Health  
and Human Services, *Vice Chair*  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Children, Families, and Elder Affairs  
Military and Veterans Affairs and Space  
**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

March 22, 2019

Senator Lizbeth Benacquisto  
402 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399

Chair Benacquisto,

I respectfully request that **SB 980 – Public Records** be placed on the next available agenda for the Committee on Rules. SB 980 passed its last committee stop unanimously.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script, appearing to read "Gayle", written in dark ink.

Senator Gayle Harrell  
Senate District 25

Cc: John B. Phelps, Staff Director  
Cynthia Futch, Committee Administrative Assistant

**REPLY TO:**

- ☐ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- ☐ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

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

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

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

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

10 APR 19

Meeting Date

SB 980

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Scott Howell

Job Title Vice President for External Affairs

Address 425 Office Plaza Dr.

Phone 850-325-3721

Street

Tall.

City

FL

State

32301

Zip

Email howell-scott@fcadv.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Coalition Against Domestic Violence

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 354

INTRODUCER: Education Committee and Senator Montford

SUBJECT: Immunization Registry

DATE: April 9, 2019

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

|    | ANALYST             | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------------------|----------------|-----------|------------------|
| 1. | Rossitto-Van Winkle | Brown          | HP        | <b>Favorable</b> |
| 2. | Olenick             | Sikes          | ED        | <b>Fav/CS</b>    |
| 3. | Rossitto-Van Winkle | Phelps         | RC        | <b>Favorable</b> |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 354 directs certain health care practitioners to report vaccination administration data to the Department of Health (DOH) immunization registry when vaccinating children up to 18 years of age or college or university students at a college or university health center who are 19 to 23 years of age. The bill permits a parent or guardian of a child up to 18 years of age or a college or university student 19 to 23 years of age to opt out of being included in the immunization registry. Such a decision not to participate in the immunization registry must be provided to DOH and the healthcare practitioner and all records regarding the child or student must be removed from the registry.

The bill also directs school boards and private school governing bodies to establish and enforce a policy requiring that before a child may attend a public or private school, the child must have on file a Florida Certification of Immunization (FCI) with the DOH immunization registry. Any child who does not participate in the immunization registry must present or have on file with the school an FCI form, which will be a part of the student's permanent record and be transferred with the student if the student transfers.

The bill also provides that school boards and private school governing bodies must establish and enforce a policy requiring appropriate scoliosis screening at the proper age.

The effective date of the bill is January 1, 2021.

## **II. Present Situation:**

### **Communicable Disease Prevention and Control**

The DOH is responsible for the state's public health system, which must promote, protect, and improve the health of all people in the state.<sup>1</sup> As part of fulfilling this public health mission, the DOH is responsible for conducting a communicable disease prevention and control program. A communicable disease is any disease caused by the transmission of a specific infectious agent, or its toxic products, from an infected person, animal, or the environment to a susceptible host, either directly or indirectly.<sup>2</sup>

The DOH communicable disease program includes, but need not be limited to, programs for the prevention and control of:

- Tuberculosis;
- Human immunodeficiency virus (HIV) infection and acquired immune deficiency syndrome (AIDS);
- Sexually transmissible diseases;
- Communicable diseases of public health significance; and
- Vaccine-preventable diseases<sup>3</sup>, including programs to immunize school children<sup>4</sup> and the development of an automated, electronic, and centralized database or registry for immunization records.<sup>5</sup>

The DOH may adopt rules related to the prevention and control of communicable diseases and the administration of the immunization registry. Such rules may include procedures for:

- Investigating disease;
- Timeframes for reporting disease;
- Definitions;
- Procedures for managing specific diseases;
- Requirements for follow-up reports on disease exposure; and
- Procedures for providing access to confidential information necessary for disease investigations.<sup>6</sup>

### **The DOH Immunization Registry (Florida SHOTS)**

The DOH must ensure that all children are immunized against vaccine-preventable diseases and be included in the immunization registry, for the purpose of enhancing the DOH's immunization

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<sup>1</sup> Section 381.001, F.S.

<sup>2</sup> Section 381.003(1), F.S.

<sup>3</sup> Measles, mumps, rubella, pertussis, diphtheria, tetanus, polio, varicella, pneumococcal disease, hepatitis A, hepatitis B, influenza, meningococcal and Haemophilus influenza type b (Hib) are all preventable by vaccine. See Department of Health, *Vaccine Preventable Diseases*, <http://www.floridahealth.gov/diseases-and-conditions/vaccine-preventable-disease/index.html> (last visited Jan. 18, 2019).

<sup>4</sup> See s. 1003.22(3)-(11), F.S.

<sup>5</sup> Section 381.003(1), F.S.

<sup>6</sup> Section 381.003(2), F.S.

activities and improve immunization for all children. Florida's State Health Online Tracking System (SHOTS) is the free, statewide, centralized online immunization registry that assists healthcare providers, schools, and parents keep track of immunization records.<sup>7</sup> The program seeks to ensure a cause-and-effect response by monitoring immunization levels in vulnerable populations throughout the state, thereby contributing to strategies to attain and sustain high immunization levels. This has the effect of lowering vaccine-preventable disease rates.<sup>8</sup>

The DOH may make rules for the immunization registry, to include:

- Procedures for a health care practitioner to obtain authorization to use the registry;
- Methods for a parent or guardian to elect not to participate in the registry; and
- Procedures for health care practitioners licensed under chs. 458, 459, or 464, F.S., to access and share electronic immunization records with other entities allowed by law to have access to the records.<sup>9</sup>

The DOH includes all children born in this state in the immunization registry by using the birth records from the Office of Vital Statistics and then adds other children to the registry as immunizations are given. The DOH documents in the registry the child's:

- Name;
- Date of birth;
- Address;
- Other unique information to identify the child; and
- The immunization(s) administered, including:
  - Type of vaccine administered;
  - The date the vaccine was administered;
  - The vaccine lot number; and
  - The presence or absence of any adverse reaction or contraindication to the immunization.<sup>10</sup>

A parent or guardian may refuse to have a child included in the immunization registry. In such case, a parent or guardian must sign a DOH-approved form which indicates that the parent or guardian does not wish to have the child's immunization history included in the immunization registry. The decision to not participate in the registry must be noted in the registry.<sup>11</sup>

The DOH immunization registry allows for immunization records to be electronically transferred to entities that are required by law to have such records, including schools, licensed child care facilities, and any other entities required by law to obtain proof of a child's immunizations. Any health care practitioner licensed under chs. 458, 459, or 464, F.S., who complies with the DOH rules to access the immunization registry, may:

- Directly access a child's immunization records;

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<sup>7</sup> Department of Health, Providing Records to Patients, *Deliver Accurate, Timely Records*, <http://www.floridahealth.gov/programs-and-services/immunization/information-for-healthcare-providers/providing-records-to-patients/index.html> (last visited Jan. 18, 2019).

<sup>8</sup> See Department of Health, *Vaccine Preventable Diseases*, <http://www.floridahealth.gov/diseases-and-conditions/vaccine-preventable-disease/index.html> (last visited Jan. 18, 2019).

<sup>9</sup> Section 381.003(1)(e), F.S.

<sup>10</sup> Section 381.003(1)(e)4., F.S.

<sup>11</sup> Section 381.003 (1)(e)2., F.S.

- Update a child's immunization history; or
- Exchange immunization information with another authorized practitioner, entity, or agency involved in a child's care.<sup>12</sup>

The SHOTS also helps prevent needless revaccinations for entry into daycare and schools because of lost or unavailable paper records. Currently over 15,000 health care practitioners licensed under chs. 458, 459, or 464, F.S., voluntarily provide data to the registry; but because reporting is currently voluntary, some individuals' immunization records in the data base have been incomplete. As a result, the immunization program has received many complaints with respect to incomplete records. This has resulted in unnecessary revaccinations and difficulty for parents and schools to obtain a paper record.<sup>13</sup>

The information included in the DOH immunization registry retains its status as confidential medical information; and the DOH must maintain the confidentiality of that information as required by law. A health care practitioner or other agency that obtains information from the immunization registry must also maintain the confidentiality of the records as required by law.<sup>14</sup>

### **Required Immunizations**

Each school district board and non-public school governing body is required to ensure that every child entering school in kindergarten through grade 12 must present or have on file a Florida Certificate of Immunization (FCI) before entering or enrolling in school.<sup>15</sup> Children entering, attending or transferring to Florida public or non-public schools, kindergarten through grade 12, must have on file as part of their permanent school record<sup>16</sup> an FCI documenting that they have had the following immunizations:

- Four or five doses of DTaP (Diphtheria-tetanus-acellular pertussis);
- Four or five doses of IPV (Inactivated polio vaccine);
- Two doses of MMR (Measles-mumps-rubella);
- Three doses of Hep B (Hepatitis B);
- One Tdap (Tetanus-diphtheria-acellular pertussis);
- Two doses of Varicella (unless there is a history of varicella disease documented by a health care provider); and
- If entering a public or non-public school in seventh grade or later, an additional dose of Tdap (Tetanus-diphtheria-acellular pertussis).<sup>17</sup>

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<sup>12</sup> Section 381.003(1)(e), F.S.

<sup>13</sup> Department of Health, *Florida Shots, keeping shots in check*. available at <http://flshotsusers.com/parents-guardians>, (last visited Feb. 14, 2019).

<sup>14</sup> Section 381.003(1)(e)4., F.S.

<sup>15</sup> Section 1003.22(4), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> See also Department of Health, *School Immunization Requirements* (last modified Aug. 19, 2016), available at <http://www.floridahealth.gov/%5C/programs-and-services/immunization/children-and-adolescents/school-immunization-requirements/index.html#childcare> (last visited Jan. 18, 2019). See also the Dep't of Health, Form DH-680, Form for Florida Certification of Immunizations (Jul. 2010), available at <http://www.floridahealth.gov/%5C/programs-and-services/immunization/documents/dh-680-sample.pdf> (last visited Jan. 18, 2019).

Private health care providers may grant a temporary medical exemption (TME), documented on the FCI form,<sup>18</sup> for those who are in the process of completing any necessary immunizations. The TME incorporates an expiration date after which the exemption is no longer valid, and the immunizations must be completed before or at that time. A permanent medical exemption may be granted if a child cannot be fully immunized due to medical reasons. In such case, the child's physician must state in writing the reasons for the exemption based on valid clinical reasoning or evidence on the FCI form.<sup>19</sup>

A request for a religious exemption from immunizations requires the parent or guardian to provide the school or facility with a Religious Exemption Immunization form.<sup>20</sup> The form is issued only by county health departments and only for children who are not immunized because of the family's religious tenets or practices. Exemptions for personal or philosophical reasons are not permitted under Florida law.<sup>21</sup>

### Scoliosis Screening

The term "scoliosis" indicates lateral curvature and rotation of the spine. Although it can span all age groups, the deformity is most frequently seen in normal, rapidly-growing, preadolescent or adolescent children. Because most of the serious consequences of scoliosis can be prevented, it is particularly responsive to early diagnosis and proper treatment.<sup>22</sup>

Currently, the DOH School Health Services Program, a component of the public health system, provides basic health services to all public school students, including scoliosis screening. Scoliosis screening is required by the DOH, at a minimum, for all sixth grade students.<sup>23</sup> In addition, all 67 counties provide additional basic services through the DOH School Health Services Program, including:

- Health appraisals;
- Nursing assessments;
- Child-specific training;
- Preventative dental screenings and services;
- Vision, hearing, scoliosis, and growth and development screenings;

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<sup>18</sup> Department of Health, Form DH-680, Form for Florida Certification of Immunizations (Jul. 2010), available at <http://www.floridahealth.gov/%5C/programs-and-services/immunization/documents/dh-680-sample.pdf> (last visited Jan. 18, 2019).

<sup>19</sup> Department of Health, *Exemptions from Immunizations*, <http://www.floridahealth.gov/programs-and-services/immunization/children-and-adolescents/immunization-exemptions/index.html> (last visited Jan. 18, 2019).

<sup>20</sup> Department of Health, Form DH-681, *Form for Religious Exemption From Immunization*, <http://www.floridahealth.gov/%5C/programs-and-services/immunization/documents/dh-681-sample.pdf> (last visited Jan. 18, 2019). The DH 681 Form, *Religious Exemption From Immunization* form, puts a parent or guardian on notice that any child not immunized against a communicable disease that has been declared a communicable disease emergency.

<sup>21</sup> Department of Health, Immunization Section, Bureau of Communicable Diseases, *Immunization Guidelines, Florida Schools, Childcare Facilities and Family Daycare Homes* (March 2013), available at <http://www.floridahealth.gov/%5C/programs-and-services/immunization/schoolguide.pdf> (last visited Jan. 18, 2019).

<sup>22</sup> Barbara H. Dunn, Michael W. Hakala, & Mary E. McGee, PEDIATRICS: *Scoliosis Screening* (May 1978, VOLUME 61 / ISSUE 5 available at [http://pediatrics.aappublications.org/content/61/5/794?sso=1&sso\\_redirect\\_count=1&nfstatus=401&nftoken=00000000-0000-0000-0000-000000000000&nfstatusdescription=ERROR%3a+No+local+token](http://pediatrics.aappublications.org/content/61/5/794?sso=1&sso_redirect_count=1&nfstatus=401&nftoken=00000000-0000-0000-0000-000000000000&nfstatusdescription=ERROR%3a+No+local+token)

<sup>23</sup> Rule 64F-003, F.A.C.



- Health counseling;
- Referral and follow-up of suspected or confirmed health problems;
- First aid and emergency health services;
- Assistance with medication administration; and
- Health care procedures for students with chronic or acute health conditions.

The goal of the School Health Services Program is to ensure that students are healthy, in school, and ready to learn.<sup>24,25</sup> In cooperation with the Department of Education (DOE), the School Health Services Program provides funding for the services mandated by statute.<sup>26</sup>

A non-public school may request to participate in the School Health Services Program. A non-public school that voluntarily participates must:

- Cooperate with the county health department and district school board in the development of the cooperative health services plan;
- Make available adequate physical facilities for health services;
- Provide in-service health training to school personnel;
- Cooperate with public health personnel in the implementation of the school health services plan;
- Be subject to health service program reviews by the DOH and the DOE;
- At the beginning of each school year, provide parents and guardians with information concerning ways they can help their children to be physically active and to eat healthful foods; and
- At the beginning of each school year, inform parents or guardians in writing that their children who are students in the school will receive specified health services as provided for in the district health services plan. A student will be exempt out of these services if his or her parent or guardian requests such exemption in writing.<sup>27</sup>

### III. Effect of Proposed Changes:

The bill directs health care practitioners licensed under chs. 458, 459, or 464, F.S., who administer vaccinations, or cause vaccinations to be administered, to children up to 18 years of age, or to college or university students at a college or university student health center who are 19 to 23 years of age, to report the following patient vaccination administration information to the DOH immunization registry (SHOTS):

- Patient's name;
- Date of birth;
- Address;
- Other unique information to identify the child; and
- The immunization(s) administered, including:

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<sup>24</sup> The Department of Health, School Health Services program, *School Health Services*, available at: <http://www.floridahealth.gov/programs-and-services/childrens-health/school-health/index.html> (last visited Feb. 14, 2019).

<sup>25</sup> Philip, Celeste, M.D., M.P.H., State Surgeon General and Secretary, the Department of Health, School Health Administrative Resource Manual (revised 2017) at p. 8, available at <http://www.floridahealth.gov/programs-and-services/childrens-health/school-health/documents/2017-school-health-resource-manual1.pdf>

<sup>26</sup> See ss. 381.0056, 381.0057, and 402.3026, F.S.

<sup>27</sup> Section 381.0056(5), F.S.

- Type of vaccine administered;
- The date the vaccine was administered;
- The vaccine lot number; and
- The presence or absence of any adverse reaction or contraindication to the immunization.

The bill permits a parent or guardian of a child up to 18 years of age or a college or university student 19 to 23 years of age to opt out of being included in the immunization registry. The opt-out must be provided to the Florida Department of Health (DOH) and to the healthcare practitioner upon the administration of the vaccination. All records and references regarding a child or college or university student who has opted out must be removed from the immunization registry.

The bill directs school boards and private school governing bodies to establish and enforce a policy requiring that before a child may attend a public or non-public school, the child must have on file a Florida Certificate of Immunization (FCI) with the DOH immunization registry. Any child who does not participate in the immunization registry must present or have on file with the school an FCI form, which will be a part of the student's permanent record and be transferred with the student if the student transfers.

The bill also directs school boards and private school governing bodies to establish and enforce a policy requiring appropriate scoliosis screening at the proper age.

The bill specifies that the reporting of the vaccination administration data to the DOH immunization registry for other persons is permitted but not required. Health care practitioners may use an existing automated data system for updating immunization information in the immunization registry.

The bill directs that the immunization registry must make electronically available the immunization records to entities required by law to have such records, including, but not limited to, schools and licensed child care facilities.

The bill directs that detailed rulemaking authority relating to the DOH's responsibilities to conduct a communicable disease prevention and control program be condensed into a general granting of rulemaking authority.

The bill takes 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:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Housing vaccination data in the registry may allow individuals to avoid the cost of needless revaccinations.

The bill may create a negative fiscal impact on private school governing bodies to cover the costs associated with establishing and enforcing a policy requiring appropriate scoliosis screening at the proper age.

C. Government Sector Impact:

It is unclear the extent to which school district technology systems will be able to handle the transfer and storage of student's immunization data from the state registry of immunizations, Florida SHOTS, to become a part of each student's permanent record.<sup>28</sup> If a school district's technology system requires modification to meet the requirements of the bill, there could be a fiscal impact on that school district.

**VI. Technical Deficiencies:**

The title of the bill is "An act relating to immunization registry." That title could be interpreted as failing to address the bill's requirements relating to public and private school scoliosis screening.

**VII. Related Issues:**

The DOH, in cooperation with the DOE, already has responsibility for the administration, supervision, and periodic review of the School Health Services Program, which includes mandatory scoliosis screening in public schools and in non-public schools that request to participate in the School Health Services Program.

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<sup>28</sup> Staff of the Florida Department of Education, *Legislative Bill Analysis for SB 354* (2019).

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 381.003 and 1003.22.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:****CS by Education on March 26, 2019:**

The Committee Substitute provides an opt-out provision for parents or guardians to refuse to include their child on the immunization registry. It also specifies that a college or university student, from 19 years of age to 23 years of age, who obtains a vaccination from a Florida college or university student health center may also opt out from the immunization registry. The opt-out must be provided to the Florida Department of Health and to the healthcare practitioner upon the administration of the vaccination. All records and references regarding a child or college or university student who has opted out must be removed from the immunization registry.

**B. Amendments:**

None.

By the Committee on Education; and Senator Montford

581-03501-19

2019354c1

A bill to be entitled

An act relating to immunization registry; amending s. 381.003, F.S.; revising provisions relating to the communicable disease prevention and control programs under the Department of Health; establishing that a certain student who obtains a vaccination from a Florida college or university student health center may refuse to be included in the immunization registry; providing requirements for electronic availability of, rather than transfer of, immunization records; requiring certain health care practitioners to report data to the immunization registry; authorizing the department to adopt rules; amending s. 1003.22, F.S.; revising school-entry health requirements to require students to have a certificate of immunization on file with the department's immunization registry; providing an effective date.

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

Section 1. Section 381.003, Florida Statutes, is amended to read:

381.003 Communicable disease and AIDS prevention and control.—

(1) The department shall conduct a communicable disease prevention and control program as part of fulfilling its public health mission. A communicable disease is any disease caused by transmission of a specific infectious agent, or its toxic products, from an infected person, an infected animal, or the

Page 1 of 7

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

581-03501-19

2019354c1

environment to a susceptible host, either directly or indirectly. The communicable disease program must include, but need not be limited to:

(a) Programs for the prevention and control of tuberculosis in accordance with chapter 392.

(b) Programs for the prevention and control of human immunodeficiency virus infection and acquired immune deficiency syndrome in accordance with chapter 384 and this chapter.

(c) Programs for the prevention and control of sexually transmissible diseases in accordance with chapter 384.

(d) Programs for the prevention, control, and reporting of communicable diseases of public health significance as provided for in this chapter.

(e) Programs for the prevention and control of vaccine-preventable diseases, including programs to immunize school children as required by s. 1003.22(3)-(11) and the development of an automated, electronic, and centralized database and ~~or~~ registry of immunizations. The department shall ensure that all children in this state are immunized against vaccine-preventable diseases. The immunization registry must ~~shall~~ allow the department to enhance current immunization activities for the purpose of improving the immunization of all children in this state.

1. Except as provided in subparagraph 2., the department shall include all children born in this state in the immunization registry by using the birth records from the Office of Vital Statistics. The department shall add other children to the registry as immunization services are provided.

2. The parent or guardian of a child may refuse to have the

Page 2 of 7

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581-03501-19

2019354c1

child included in the immunization registry by signing an opt-out a form obtained from the department, or from the health care practitioner or entity that provides the immunization, which indicates that the parent or guardian does not wish to have the child included in the immunization registry. The opt-out form must be provided to the department and to the healthcare practitioner upon the administration of the vaccination. If the parent or guardian of a child has refused to include the child on in the registry, all records regarding the child must be removed from the registry and any reference to the child may not be included decision to not participate in the immunization registry must be noted in the registry.

3. A college or university student, from 19 years of age to 23 years of age, who obtains a vaccination from a Florida college or university student health center may refuse to be included in the immunization registry by signing an opt-out form obtained from the department or from a Florida college or university student health center which indicates that the student does not wish to be included in the immunization registry. The opt-out form must be provided to the department and to the healthcare practitioner upon the administration of the vaccination. If the college or university student has refused to be included in the registry, all records regarding the student must be removed from the registry and any reference to the student may not be included in the registry.

4.3- The immunization registry shall allow for immunization records to be electronically available ~~transferred~~ to entities that are required by law to have such records, including, but not limited to, schools and, licensed child care facilities, ~~and~~

581-03501-19

2019354c1

~~any other entity that is required by law to obtain proof of a child's immunizations.~~

5.4- A ~~Any~~ health care practitioner licensed under chapter 458, chapter 459, or chapter 464 in this state who administers vaccinations or causes vaccinations to be administered to children from birth to 18 years of age is required to report vaccination data to the immunization registry, unless a parent or guardian of a child has refused to have the child included in the immunization registry by meeting the requirements of subparagraph 2. A health care practitioner licensed under chapter 458, chapter 459, or chapter 464 in this state who administers vaccinations or causes vaccinations to be administered to college or university students from 19 years of age to 23 years of age at a Florida college or university student health center is required to report vaccination data to the immunization registry, unless the student has refused to be included in the immunization registry by meeting the requirements of subparagraph 3. Vaccination data for other age ranges may be submitted to the immunization registry on a voluntary basis. The upload of data from existing automated systems is an acceptable method for updating immunization information in the immunization registry. ~~complies with rules adopted by the department to access the immunization registry may, through the immunization registry, directly access immunization records and update a child's immunization history or exchange immunization information with another authorized practitioner, entity, or agency involved in a child's care.~~ The information ~~included~~ in the immunization registry must include the child's name, date of birth, address, and any other unique

581-03501-19

2019354c1

117 identifier necessary to correctly identify the child; the  
 118 immunization record, including the date, type of administered  
 119 vaccine, and vaccine lot number; and the presence or absence of  
 120 any adverse reaction or contraindication related to the  
 121 immunization. Information received by the department for the  
 122 immunization registry retains its status as confidential medical  
 123 information and the department must maintain the confidentiality  
 124 of that information as otherwise required by law. A health care  
 125 practitioner or other agency that obtains information from the  
 126 immunization registry must maintain the confidentiality of any  
 127 medical records in accordance with s. 456.057 or as otherwise  
 128 required by law.

129 (2) The department may adopt rules pursuant to ss.  
 130 120.536(1) and 120.54 to implement this section, repeal, and  
 131 amend rules related to the prevention and control of  
 132 communicable diseases and the administration of the immunization  
 133 registry. Such rules may include procedures for investigating  
 134 disease, timeframes for reporting disease, definitions,  
 135 procedures for managing specific diseases, requirements for  
 136 followup reports of known or suspected exposure to disease, and  
 137 procedures for providing access to confidential information  
 138 necessary for disease investigations. For purposes of the  
 139 immunization registry, the rules may include procedures for a  
 140 health care practitioner to obtain authorization to use the  
 141 immunization registry, methods for a parent or guardian to elect  
 142 not to participate in the immunization registry, and procedures  
 143 for a health care practitioner licensed under chapter 458,  
 144 chapter 459, or chapter 464 to access and share electronic  
 145 immunization records with other entities allowed by law to have

581-03501-19

2019354c1

146 ~~access to the records.~~

147 Section 2. Subsection (4) of section 1003.22, Florida  
 148 Statutes, is amended to read:

149 1003.22 School-entry health examinations; immunization  
 150 against communicable diseases; exemptions; duties of Department  
 151 of Health.—

152 (4) Each district school board and the governing authority  
 153 of each private school shall establish and enforce a ~~as~~ policy  
 154 that:—

155 (a) Prior to admittance to or attendance in a public or  
 156 private school, grades kindergarten through 12, or any other  
 157 initial entrance into a Florida public or private school, each  
 158 child ~~present or~~ have on file with the immunization registry  
 159 ~~school~~ a certification of immunization for the prevention of  
 160 those communicable diseases for which immunization is required  
 161 by the Department of Health. Any child who is excluded from  
 162 participation in the immunization registry pursuant to s.  
 163 381.003(1)(e)2. must present or have on file with the school  
 164 such certification of immunization and further shall provide for  
 165 appropriate screening of its students for scoliosis at the  
 166 proper age. Such Certification of immunization shall be made on  
 167 forms approved and provided by the Department of Health or be on  
 168 file with the immunization registry and shall become a part of  
 169 each student's permanent record, to be transferred when the  
 170 student transfers, is promoted, or changes schools. The transfer  
 171 of such immunization certification by Florida public schools  
 172 shall be accomplished using the Florida Automated System for  
 173 Transferring Education Records and shall be deemed to meet the  
 174 requirements of this section.

581-03501-19

2019354c1

175       (b) Provides for appropriate screening of its students for  
176       scoliosis at the proper age.  
177       Section 3. This act shall take effect January 1, 2021.



1105 - 10am

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/19

Meeting Date

354

Bill Number (if applicable)

Topic Immunization Registry

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Exec. Director

Address 2544 Blairstone Pines Dr.

Phone 878-7364

Street

Tall.

City

FL

State

32301

Zip

Email winnsr@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/19

Meeting Date

SB 354

Bill Number (if applicable)

Topic Immunization Registry

Amendment Barcode (if applicable)

Name Andrea DeMichael

Job Title Attorney

Address 8697 Alexandrite Ct.

Street

Phone (863) 640-0344

Tallahassee FL 32309

City

State

Zip

Email Andrea.DeMichael@  
gmail.com

Speaking: ☐ For ☒ Against ☒ Information

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

Representing Florida Freedom Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/19  
Meeting Date

SB 354  
Bill Number (if applicable)

Topic Vaccine Tracking Bill

Amendment Barcode (if applicable)

Name Mackenzie Fraser

Job Title Health Freedom Florida

Address 153 Evernia Loop  
Street

Phone (970) 418-0493

Tall FL 32312  
City State Zip

Email mackstrickfraser@gmail

Speaking: ☐ For ☒ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 10 2019  
Meeting Date

354  
Bill Number (if applicable)

Topic Immunization Registry

Amendment Barcode (if applicable)

Name Doug Bell

Job Title

Address 119 S. Monroe St  
Street

Phone 205 9000

TLH  
City State Zip

Email doug.bell@unhclfirm.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Chapter, American Academy of Pediatrics

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-10-19

Meeting Date

354

Bill Number (if applicable)

Topic Immunization Registry

Amendment Barcode (if applicable)

Name Jarrod Fowler

Job Title Dir. of Health Care Policy

Address 1430 Piedmont Dr. E

Phone 850-224-6994

Street Bonesssee Rd

City Palmdale State FL Zip 32502

Email jarrod@fla-medical.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Medical 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)

# APPEARANCE RECORD

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

4/10/19

Meeting Date

SB 354

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Greg Pound

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

Address 9166 Sunrise Dr.

Phone \_\_\_\_\_

Street

Losgo

City

FL

State

33173

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SJR 362

INTRODUCER: Senator Brandes

SUBJECT: Abolishing the Constitution Revision Commission

DATE: April 9, 2019

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

| ANALYST     | STAFF DIRECTOR | REFERENCE | ACTION           |
|-------------|----------------|-----------|------------------|
| 1. Stallard | Cibula         | JU        | <b>Favorable</b> |
| 2. McVaney  | McVaney        | GO        | <b>Favorable</b> |
| 3. Stallard | Phelps         | RC        | <b>Favorable</b> |

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## **I. Summary:**

SJR 362 abolishes the Constitution Revision Commission by repealing provisions establishing it in the Florida Constitution. Currently, the Constitution requires that a constitution revision commission be convened once every 20 years to examine the State Constitution and propose any amendments that it deems appropriate.

If this joint resolution is approved by three-fifths of the membership of each house of the Legislature, the constitutional amendment proposed in the resolution will be placed on the 2020 General Election ballot and will take effect if approved by at least 60 percent of the votes cast on the measure.

## **II. Present Situation:**

### **Overview**

The Florida Constitution requires that a constitution revision commission be established every 20 years and that it have the authority to propose to voters a revision of all or any part of the Florida Constitution. The most recent Commission convened in 2017-2018, and proposed seven amendments to the Florida Constitution, which appeared on the 2018 General Election ballot.

### **Constitution Revision Commission**

#### ***Origin and History***

The Florida Constitution was revised extensively in 1968 by way of three joint resolutions proposed by the Legislature and approved by the voters. The revisions included the establishment of the Constitution Revision Commission as a means of proposing constitutional revisions to the voters, and the requirement that it convene once every 20 years, beginning in

1977. Accordingly, three Commissions have convened: in 1977-1978, 1997-1998, and most recently in 2017-2018.<sup>1</sup>

### ***Members***

The Constitution requires that the Commission be comprised of 37 members, and it provides guidelines for the selection of these members. The Attorney General must serve on the Commission, and the rest of the members must be chosen by the Governor (15), Speaker of the House (9), President of the Senate (9), and the Chief Justice of the Florida Supreme Court (3). Additionally, the Governor must appoint a chair from among the 37 members.<sup>2</sup>

### ***Task, Procedures, and Authority***

The Commission's task is to examine the Constitution and decide which, if any, amendments to propose to the voters. The amendments must be submitted to the Secretary of State at least 180 days before the next general election.<sup>3</sup> In turn, the amendments must be submitted to the voters at the next general election held more than 90 days after submission to the Secretary of State. To become effective, an amendment must be approved by at least 60 percent of the votes cast on the measure.<sup>4</sup>

The constitutional provision giving rise to the Commission does little to prescribe how a Commission must go about its task. Indeed, it says only that the Commission must convene at the call of its chair, adopt rules of procedure, and "hold [an unspecified number of] public hearings."<sup>5</sup>

### **The Constitution May Be Amended Only through the Processes it Prescribes**

The Constitution provides that it may be amended if the voters approve an amendment originating from one of five sources: the legislature, a constitution revision commission, a citizen initiative, a constitutional convention, or the taxation and budget reform commission.<sup>6</sup>

Further, the Florida Supreme Court has stated that these processes are the *only* ways by which it may be amended:

The Constitution is the charter of our liberties. It cannot be changed, modified or amended by [governmental] fiat. It provides within itself the only method for its amendment, and . . . When a constitution directs how a thing shall be done, that is in effect a prohibition to its being done in any other way.<sup>7</sup>

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<sup>1</sup> Constitution Revision Commission, *History*, <http://flcrc.gov/about/history.html> (last visited Jan. 29, 2019).

<sup>2</sup> FLA. CONST. art. XI, s. 2.

<sup>3</sup> FLA. CONST. art. XI, s. 2.

<sup>4</sup> FLA. CONST. art. XI, s. 5.

<sup>5</sup> FLA. CONST. art. XI, s. 2.

<sup>6</sup> FLA. CONST. art. XI.

<sup>7</sup> *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1064 (Fla. 2010) (internal citations and quotations omitted); *accord State v. Florida State Imp. Com'n*, 60 So. 2d 747, 754 (Fla. 1952) (Terrell, J., and Adams, C.J., concurring) *abrogated on other grounds by Boschen v. City of Clearwater*, 777 So. 2d 958 (Fla. 2001).



## **Joint Resolution**

A joint resolution by the Legislature is one of the ways in which an amendment to the Florida Constitution may originate.<sup>8</sup> Like a bill, it may begin in either house of the Legislature.

To pass out of the Legislature and be submitted to the voters, a joint resolution must be agreed to by three-fifths of the membership of each house.<sup>9</sup> Unless expedited by the Legislature, the joint resolution is then submitted to the voters at the next general election. If the amendment proposed in the resolution is approved by at least 60 percent of the votes cast on the measure, it becomes effective in the January following the election unless otherwise specified in the amendment or in the Constitution.<sup>10</sup>

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

This joint resolution proposes to amend the Florida Constitution to repeal the provisions that establish a constitution revision commission. The joint resolution also amends other constitutional provisions that reference a constitution revision commission. These changes effectively abolish the constitution revision commission and the commission's authority to propose constitutional amendments to be placed on the ballot for approval by the voters.

### **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 identified.

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<sup>8</sup> FLA. CONST. art. XI. An amendment or revision may originate as a proposal by the Legislature, the Constitution Revision Commission, a Constitutional Convention, the Taxation and Budget Reform Commission, or the people directly, by way of an initiative.

<sup>9</sup> FLA. CONST. art. XI, s. 1.

<sup>10</sup> FLA. CONST. art XI, s. 5.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Department of State, Division of Elections, provided the following information regarding the cost of advertising the proposed amendment contained in the resolution:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was \$92.93 per English word of the originating document.

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be \$62,448.96, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. At this time, no amendments have achieved ballot position for the 2020 election by either joint resolution of the Florida Legislature or by the initiative petition process.<sup>11</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Considering that a taxation and budget reform commission (TBRC) is substantially similar to a constitution revision commission, the Legislature may wish to consider abolishing the TBRC.

A TBRC, created by Article VI, s. 6 of the Florida Constitution, is comprised of appointees who have the power to propose constitutional amendments directly to the electors. These amendments

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<sup>11</sup> Email from Brittany Dover, Director of Legislative Affairs, Florida Department of State (Feb. 1, 2019) (on file with the Senate Committee on Judiciary).

may include a “revision of this constitution or any part of it dealing with taxation or the state budgetary process.”<sup>12</sup>

**VIII. Statutes Affected:**

This resolution amends the following sections of the Florida Constitution: Article II, section 5, Article XI, section 2, and Article XI, section 5.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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<sup>12</sup> FLA. CONST. art. XI, s. 6(e).

By Senator Brandes

24-00636-19

2019362\_\_

Senate Joint Resolution

A joint resolution proposing amendments to Section 5 of Article II and Section 5 of Article XI and the repeal of Section 2 of Article XI of the State Constitution to abolish the Constitution Revision Commission.

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

That the following amendments to Section 5 of Article II and Section 5 of Article XI and the repeal of Section 2 of Article XI of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE II

GENERAL PROVISIONS

SECTION 5. Public officers.—

(a) No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state. No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of the a ~~constitution revision commission~~, taxation and budget reform commission, a constitutional convention, or a statutory body having only advisory powers.

Page 1 of 4

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

24-00636-19

2019362\_\_

(b) Each state and county officer, before entering upon the duties of the office, shall give bond as required by law, and shall swear or affirm:

"I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the state; and that I will well and faithfully perform the duties of ... (title of office) ... on which I am now about to enter. So help me God.",

and thereafter shall devote personal attention to the duties of the office, and continue in office until a successor qualifies.

(c) The powers, duties, compensation and method of payment of state and county officers shall be fixed by law.

ARTICLE XI

AMENDMENTS

SECTION 5. Amendment or revision election.—

(a) A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after the joint resolution or report of a ~~revision commission~~, constitutional convention or the taxation and budget reform commission proposing it is filed with the custodian of state records, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety

Page 2 of 4

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

24-00636-19

2019362\_\_

59 days after such filing.

60 (b) A proposed amendment or revision of this constitution,  
61 or any part of it, by initiative shall be submitted to the  
62 electors at the general election provided the initiative  
63 petition is filed with the custodian of state records no later  
64 than February 1 of the year in which the general election is  
65 held.

66 (c) The legislature shall provide by general law, prior to  
67 the holding of an election pursuant to this section, for the  
68 provision of a statement to the public regarding the probable  
69 financial impact of any amendment proposed by initiative  
70 pursuant to section 3.

71 (d) Once in the tenth week, and once in the sixth week  
72 immediately preceding the week in which the election is held,  
73 the proposed amendment or revision, with notice of the date of  
74 election at which it will be submitted to the electors, shall be  
75 published in one newspaper of general circulation in each county  
76 in which a newspaper is published.

77 (e) Unless otherwise specifically provided for elsewhere in  
78 this constitution, if the proposed amendment or revision is  
79 approved by vote of at least sixty percent of the electors  
80 voting on the measure, it shall be effective as an amendment to  
81 or revision of the constitution of the state on the first  
82 Tuesday after the first Monday in January following the  
83 election, or on such other date as may be specified in the  
84 amendment or revision.

85 BE IT FURTHER RESOLVED that the following statement be  
86 placed on the ballot:

87 CONSTITUTIONAL AMENDMENT

Page 3 of 4

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

24-00636-19

2019362\_\_

88 ARTICLE II, SECTION 5

89 ARTICLE XI, SECTIONS 2 AND 5

90 ABOLISHING THE CONSTITUTION REVISION COMMISSION.—Proposing  
91 an amendment to the State Constitution to abolish the  
92 Constitution Revision Commission, which meets at 20-year  
93 intervals and is scheduled to next convene in 2037, as a method  
94 of submitting proposed amendments or revisions to the State  
95 Constitution to electors of the state for approval. This  
96 amendment does not affect the ability to revise or amend the  
97 State Constitution through citizen initiative, constitutional  
98 convention, the Taxation and Budget Reform Commission, or  
99 legislative joint resolution.

Page 4 of 4

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 19, 2019

---

I respectfully request that **Senate Joint Resolution #362**, relating to **Abolishing the Constitution Revision Commission**, be placed on the:

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

A handwritten signature in dark ink, appearing to read "Jeff Brandes", is written over a horizontal line.

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)

4/10/19  
Meeting Date

362  
Bill Number (if applicable)

Topic CRC

Amendment Barcode (if applicable)

Name Adam Basford

Job Title Legislative Affairs Director

Address 310 W College

Phone

Tallahassee FL 32301  
City State Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Farm Bureau

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)

April 10  
Meeting Date

3102  
Bill Number (if applicable)

Topic Abolishing CRC

Amendment Barcode (if applicable)

Name Brenda Fischer

Job Title Educator

Address 2812 N 46 Ave  
Street

Phone \_\_\_\_\_

AWD FL 33021  
City State Zip

Email bfischer34@hotmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)



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

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

4/10/19  
Meeting Date

SB 362  
Bill Number (if applicable)

Topic CRC

Amendment Barcode (if applicable)

Name Rich Templin

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

Address 135 S. Monroe

Phone 850 - 224 - 6926

Street

Tallahassee

State

32301

Zip

Email \_\_\_\_\_

City

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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

4-10-19

Meeting Date

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

SB 362

Bill Number (if applicable)

Topic Abolishing the CRC

Amendment Barcode (if applicable)

Name Amy Datz

Job Title Retired Environmental Scientist

Address \_\_\_\_\_

Phone 850 322-7590

Street

Tallahassee

City

State

Zip

Email AmalieDatz

Speaking: ☒ For ☐ Against ☐ Information

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

Representing How the CRC Ruined my Life.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

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

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

April 10, 2019  
Meeting Date

0362  
Bill Number (if applicable)

Topic Abolishing the CRC

Amendment Barcode (if applicable)

Name Barbara Alber

Job Title Educator

Address 123 Puffin Court  
Street

Phone \_\_\_\_\_

Royal Palm Beach Florida 33411  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/10/19

Meeting Date

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

SB 362

Bill Number (if applicable)

Topic Abolishing CRE

Amendment Barcode (if applicable)

Name Justin Peacock

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

Address 20569 County Rd 68N

Street

Phone (850) 516-6181

Robertsdale

FL

36567

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-10-19

Meeting Date

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

362

Bill Number (if applicable)

Topic Abolishing CRC

Amendment Barcode (if applicable)

Name Kammeron Brown

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

Address 1008 Redbud Ave  
Street

Phone \_\_\_\_\_

Tallahassee FL  
City State

32303  
Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

# APPEARANCE RECORD

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

4/10/19

Meeting Date

SJR-362

Bill Number (if applicable)

Topic ABOLISH CRC

Amendment Barcode (if applicable)

Name J. B. CLARK

Job Title LOBBYIST

Address 2071 CYNTHIA DRIVE  
Street

Phone 850-556-8143

TAUNTAHASSIE, FL 32303  
City State Zip

Email JCLARK5@AOL.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL. ELECTRICAL WORKERS ASSN.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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

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

4/10/19

Meeting Date

SB 362

Bill Number (if applicable)

Topic Abolishing CRC

Amendment Barcode (if applicable)

Name Maureen Gibson

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

Address 10596 Senegal DR.

Street

Phone 850-791-8014

Pensacola

City

FL

State

32534

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-10-19

Meeting Date

SB 362

Bill Number (if applicable)

Topic ABOLISHING CNE

Amendment Barcode (if applicable)

Name RICK POULKETT

Job Title

Address 2841 OAK DR.

Street

Phone 561-312-4111

W.P.B.

FL.

33406

City

State

Zip

Email RICKPOULKETT@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

Topic

Amendment Barcode (if applicable)

Name

Job Title

Address

Street

City

State

Zip

Phone

Email

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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S-001 (10/14/14)

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

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

4/10/19

Meeting Date

5JR 362

Bill Number (if applicable)

Topic LRC

Amendment Barcode (if applicable)

Name Jim Kallinger

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

Address 1408 Pullen Rd.

Phone 850-322-6396

Tallahassee FL 32303  
City State Zip

Email jim.kallinger@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

8-10-19

Meeting Date

362

Bill Number (if applicable)

Topic Abolishing CRC

Amendment Barcode (if applicable)

Name MaryAnn Taylor

Job Title Retiree

Address 5838 Lakking Dr  
Street

Phone \_\_\_\_\_

Winter Haven FL 33881  
City State Zip

Email lynx0857@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

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

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

4/10/19

Meeting Date

SB 0362

Bill Number (if applicable)

Topic Abolishing CRC

Amendment Barcode (if applicable)

Name Robert Doane

Job Title Retired

Address 1724 Branchwater Tr.

Phone 407 739-1108

Street

Orlando

FL

32825

City

State

Zip

Email bbdoane@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

04/10/2019  
Meeting Date

SJR 362  
Bill Number (if applicable)

Topic CRC

Amendment Barcode (if applicable)

Name DONALD BROWN

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

Address POB 866  
Street

Phone \_\_\_\_\_

DEFUNIAK SPRINGS  
City State Zip

Email INFO@DONALDBROWN.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/19  
Meeting Date

SJR 382  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Jeff Kottkamp

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

10145555

FL

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

04/10/2019

Meeting Date

SSR 362

Bill Number (if applicable)

Topic ABOLISHING THE CONSTITUTION REVISION COMMISSION

Amendment Barcode (if applicable)

Name CESAR BRAJALES

Job Title DIRECTOR OF COALITIONS

Address 200 W COLLEGE AVE

Street

Phone 786.260.9283

TALLAHASSEE

FL

City

State

Zip

Email cbrajales@abolire.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AMERICANS FOR PROSPERITY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/19

Meeting Date

0362

Bill Number (if applicable)

Topic Abolishing the CRC

Amendment Barcode (if applicable)

Name Ellen Baker

Job Title Teacher

Address 5673 Whirlaway Rd

Phone \_\_\_\_\_

Street

Palm Beach Gardens FL 33418

Email \_\_\_\_\_

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/19  
Meeting Date

362  
Bill Number (if applicable)

Topic CRC

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 East Jefferson Street

Phone 850-445-5367

Street

Tallahassee

FL

32301

Email tim.nungesser@nfib.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing NFIB (National Federation of Independent Business)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: SB 530

INTRODUCER: Senators Brandes and Stewart

SUBJECT: Alcohol or Drug Overdose Prosecutions

DATE: April 9, 2019

REVISED: 3/05/19

| ANALYST     | STAFF DIRECTOR | REFERENCE | ACTION           |
|-------------|----------------|-----------|------------------|
| 1. Erickson | Jones          | CJ        | <b>Favorable</b> |
| 2. Stallard | Cibula         | JU        | <b>Favorable</b> |
| 3. Erickson | Phelps         | RC        | <b>Favorable</b> |

## I. Summary:

SB 530 expands the current law's grant of immunity for a person who seeks medical assistance to counteract a drug overdose. The bill creates a similar grant of immunity for a person who seeks help for an alcohol overdose by an underage drinker.

Under current law, a person acting in good faith who seeks medical assistance for his or her drug overdose, or the drug overdose of another person, may not be charged, prosecuted, or penalized for possession of a controlled substance. However, the immunity only applies if the evidence of the crime was obtained as a result of the person's seeking help.

Under the bill, the immunity related to drug overdoses is expanded to:

- Shield a person from arrest, and not just charges, prosecution, or penalties;
- Shield a person from several crimes beyond drug possession, including drug trafficking, and possession of a controlled substance with intent to sell it;
- Shield a person who is seeking medical help for another from arrest or prosecution for first-degree murder caused by giving another person a controlled substance; and
- No longer require a person seeking help for himself or herself to actually be experiencing an overdose as long as the person has a good faith belief that he or she is overdosing.

In addition to expanding immunity relating to drug offenses, the bill grants similar immunity to persons who seek medical assistance due to alcohol overdoses by underage drinkers. The immunity applies to a person who gives alcohol to a person younger than 21 years of age and in good faith seeks medical assistance for the underage person. The immunity also applies to an underage person if he or she seeks medical assistance when having a good faith belief that he or she is experiencing an alcohol overdose. However, one notable difference between the grants of immunity is that the immunity relating to alcohol-overdoses does not shield a person from penalties for a violation of a condition of probation, parole, or pretrial release. Another

difference is that the immunity granted to a person who provides alcohol to an underage person applies only if the person remains at the scene and cooperates with authorities.

The bill may increase costs to individuals, insurance companies, and the state.

## **II. Present Situation:**

### **Overview**

The Legislature enacted Florida's "911 Good Samaritan Act" in 2012 to encourage people to seek medical assistance for persons having a drug overdose.<sup>1</sup> The act, which is codified in s. 893.21, F.S., provides that a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance under ch. 893, F.S.<sup>2</sup>

However, the immunity only applies if the evidence for the crime was obtained as a result of the person's seeking medical assistance.<sup>3</sup> Moreover, the act specifies that it does not provide a basis for the suppression of evidence in other prosecutions.<sup>4</sup>

The act provides similar immunity for a person who seeks necessary medical assistance for his or her own overdose.<sup>5</sup>

### **"Good Samaritan" Laws Regarding Drug Overdoses**

In addition to the 911 Good Samaritan Act, s. 381.887, F.S., grants civil immunity to a person who administers a drug such as naloxone hydrochloride, which blocks the effects of opioids. Most other states have similar immunity laws, and these laws have been studied by the National Conference of State Legislatures (NCSL).

According to the NCSL, drug overdose rates continue to rise and these deaths are increasingly caused by opioids and opiates. The NCSL notes that "[o]pioid overdoses can be reversed with the timely administration of a medication called naloxone[,] an FDA-approved drug that "can be administered in a number of ways that make it possible for a lay person to use."<sup>6</sup>

According to the NCSL, "[o]ften family and friends are in the best position to administer this lifesaving drug to their loved ones who overdose. Access to naloxone, however, was relatively limited until legislatures provided specific statutory protections for nonmedical professionals to possess and administer naloxone without a prescription."<sup>7</sup> Many legislatures have enacted a law

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<sup>1</sup> Ch. 2012-36, L.O.F.

<sup>2</sup> Section 893.21(1), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Section 893.21(3), F.S.

<sup>5</sup> Section 893.21(2), F.S.

<sup>6</sup> *Drug Overdose Immunity and Good Samaritan Laws* (June 5, 2017), National Conference of State Legislatures, available at <http://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx> (last visited on Feb. 27, 2019).

<sup>7</sup> *Id.*

allowing naloxone administration, and this law is often coupled with a law providing limited immunity from criminal prosecution for providing such medical assistance.

According to NCSL, 40 states and the District of Columbia have Good Samaritan laws. This state's Good Samaritan law lacks one component that is common in other states' Good Samaritan laws: a prohibition on the arrest of a person covered by the immunity.<sup>8</sup>

### **Data on Drug-Overdose Deaths in Florida**

A recent report by the Florida Medical Examiners Commission (FMEC) cited statistics that 104,519 deaths occurred in Florida during the first 6 months of 2017.<sup>9</sup> Of the cases seen by medical examiners, toxicology results determined that ethanol (ethyl alcohol) and/or various controlled substances were present at the time of death in 6,110 cases.<sup>10</sup>

Some of the general statewide trends<sup>11</sup> noted by the FMEC in its report when comparing statewide trends for the first half of 2017 (January to June) to the first half of 2016 include:

- Total drug-related deaths increased by 11.0 percent (604 more);
- 3,353 individuals (8.0 percent more) died with one or more prescription drugs in their system;<sup>12</sup>
- 1,712 individuals (4.0 percent or more) died with at least one prescription drug in their system that was identified as the cause of death;<sup>13</sup>
- The seven most frequently occurring drugs found in decedents were ethyl alcohol (2,594), benzodiazepines (2,506, including 912 alprazolam occurrences), cocaine (1,584), cannabinoids (1,124), morphine (1,032), fentanyl analogs (875), and fentanyl (825);<sup>14</sup> and
- The drugs that caused the most deaths were cocaine (1,029), fentanyl analogs (840), morphine (679), fentanyl (667), benzodiazepines (658, including 376 alprazolam deaths), heroin (509), ethyl alcohol (490), oxycodone (306), and methamphetamine (213).<sup>15</sup>

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

The bill expands the statutory grant of immunity from charges, prosecution, or penalties for possession of a controlled substance which could otherwise result from the person's seeking medical help for his or her own overdose or for the overdose of another person.

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<sup>8</sup> See *Id* and s. 893.21, F.S.

<sup>9</sup> *Drugs Identified in Deceased Persons by Florida Medical Examiners – 2017 Interim Report* (April 2018), p. 1, Florida Medical Examiners Commission, Florida Department of Law Enforcement, available at <https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2017-Interim-Drug-Report.aspx> (last visited on Feb. 27, 2019).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at p. ii.

<sup>12</sup> The drugs were identified as both the cause of death and present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. *Id.*

<sup>13</sup> These drugs may have been mixed with other prescription drugs, illicit drugs, and/or alcohol. *Id.*

<sup>14</sup> Since heroin is rapidly metabolized to morphine, this may lead to a substantial over-reporting of morphine-related deaths as well as significant under-reporting of heroin-related deaths. *Id.*

<sup>15</sup> Fentanyl analogs (96.0 percent), heroin (93.0 percent), fentanyl (81.0 percent), morphine (66.0 percent), cocaine (65.0 percent), and methamphetamine (51.0 percent) were listed as causing death in more than 50.0 percent of the deaths in which these drugs were found. *Id.*

Under the bill, this grant of immunity is expanded to:

- Shield a person from arrest, and not just charges, prosecution, or penalties;
- Shield a person from several crimes beyond drug possession, including drug trafficking, and possession of a controlled substance with intent to sell it;
- Shield a person who is seeking medical help for another from arrest or prosecution for first-degree murder of the type that is caused by giving another person a controlled substance (with or without the intent to kill the person); and
- No longer require a person seeking help for himself or herself to actually be experiencing an overdose as long as the person has a good faith belief that he or she is overdosing.

In addition to expanding the statutory grant of immunity relating to drug overdoses, the bill creates a new grant of immunity statute related to alcohol overdoses. Under the new statute, a person who gives alcohol to an underage person and then seeks medical assistance, in good faith, for the underage person's apparent overdose may not be arrested, charged, prosecuted, or penalized for:

- Providing alcohol to a minor;
- Permitting a minor to consume alcohol on his or her premises;
- Misrepresenting his or her age in order to purchase alcohol; or
- Possessing alcohol as a minor.

However, for the immunity to apply, the person must remain at the scene and cooperate with the medical personnel and law enforcement officers who come to the scene. Moreover, the immunity applies only if the evidence for a crime was obtained as a result of the person's seeking medical help.

The bill provides a similar immunity provision for an underage person who seeks necessary medical assistance for his or her own overdose. However, this grant of immunity applies only to the crime of underage possession of alcohol.

A key difference between the alcohol-overdose statute and the drug-overdose statute is that the alcohol-overdose statute does not provide immunity from violations of probation, parole, or pretrial release. Another notable difference is that the alcohol-overdose statute requires a person who seeks help for another person's overdose to remain at the scene and cooperate with authorities.

The bill is effective July 1, 2019.

#### **IV. Constitutional Issues:**

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

None.

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

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the bill encourages people to seek medical assistance for drug and alcohol overdoses, the bill will increase medical costs. These additional costs will likely be borne by the person receiving treatment, insurers, health care providers, and the state.

C. Government Sector Impact:

To the extent that the bill encourages people to seek medical assistance for drug and alcohol overdoses, the bill will increase medical costs. These additional costs will likely be borne by the person receiving treatment, insurers, health care providers, and the state.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Most of the changes proposed by the bill are features of the overdose immunity laws of at least one other state,<sup>16</sup> and the inclusion of arrests in s. 893.21, F.S., was a recommendation of Florida's Statewide Drug Policy Advisory Council in 2016.<sup>17</sup> However, Senate Criminal Justice Committee staff was unable to find any overdose immunity law of another state that provides immunity from criminal arrest, charge, prosecution, or penalty for a law comparable to

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<sup>16</sup> Provided are a few examples: Georgia law (Ga. Code Ann. s. 16-13-5) includes arrests; Colorado law (Colo. Rev. Stat. s. 18-1-711) includes alcohol overdose; New York law (N.Y. Penal Law s. 220.78) provides immunity for possession of alcohol by a person under 21 years of age; Mississippi law (Miss. Code. Ann. s. 41-29-149.1) provides immunity for drug paraphernalia offenses; and Tennessee law (Tenn. Code Ann. s. 63-1-156) provides immunity for pretrial, probation, or parole violations.

<sup>17</sup> *Statewide Drug Policy Advisory Council – 2016 Annual Report* (December 1, 2016), p. 15, Florida Department of Health, available at <http://www.floridahealth.gov/provider-and-partner-resources/dpac/DPAC-Annual-Report-2016-FINAL.pdf> (last visited on Feb. 11, 2019).

s. 782.04(1)(a)3., F.S., which punishes first degree murder involving unlawful distribution of a specified controlled substance. In fact, at least one state, Illinois, specifically states in its overdose immunity law that the law is not intended to prevent arrest or prosecution for drug-induced homicide.<sup>18</sup> As indicated by the NCSL, overdose immunity laws “generally provide immunity from arrest, charge or prosecution for certain controlled substance possession and paraphernalia offenses[.]”<sup>19</sup>

While the bill does not nullify s. 782.04(1)(a)3., F.S., the bill appears to effectively bar arrest or prosecution of a person who distributed a controlled substance to a user that was the proximate cause of the user’s death but who also provided medical assistance to the user (albeit the user still died) in accordance with s. 893.21, F.S., as amended by the bill.

Staff was also unable to find any overdose immunity law of another state that provides immunity from criminal arrest, charge, prosecution, or penalty for a law comparable to s. 893.135, F.S., which punishes drug trafficking.<sup>20</sup>

## **VIII. Statutes Affected:**

This bill substantially amends section 893.21 of the Florida Statutes.

This bill creates section 562.112 of the Florida Statutes.

## **IX. Additional Information:**

### **A. Committee Substitute – Statement of Changes:**

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

None.

### **B. Amendments:**

None.

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

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<sup>18</sup> 720 Ill. Comp. Stat. Ann. 570/414.

<sup>19</sup> *Drug Overdose Immunity and Good Samaritan Laws* (June 5, 2017), National Conference of State Legislatures, available at <http://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx> (last visited on Feb 11, 2019).

<sup>20</sup> The act of “trafficking” can include possession, purchase, sale, manufacture, delivery, or importation. *See generally* s. 893.135, F.S.

By Senator Brandes

24-00741A-19

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1 A bill to be entitled  
 2 An act relating to alcohol or drug overdose  
 3 prosecutions; creating s. 562.112, F.S.; prohibiting  
 4 the arrest, charge, prosecution, or penalization under  
 5 specified provisions of a person acting in good faith  
 6 who seeks medical assistance for an individual  
 7 experiencing, or believed to be experiencing, an  
 8 alcohol-related overdose; providing requirements for  
 9 that person; prohibiting the arrest, charge,  
 10 prosecution, or penalization under specified  
 11 provisions of a person who experiences, or has a good  
 12 faith belief that he or she is experiencing, an  
 13 alcohol-related overdose; prohibiting the protection  
 14 from arrest, charge, prosecution, or penalization for  
 15 certain offenses from being grounds for suppression of  
 16 evidence in other criminal prosecutions; amending s.  
 17 893.21, F.S.; prohibiting the arrest, charge,  
 18 prosecution, or penalization under specified  
 19 provisions of a person acting in good faith who seeks  
 20 medical assistance for an individual experiencing, or  
 21 believed to be experiencing, a drug-related overdose;  
 22 prohibiting the arrest, charge, prosecution, or  
 23 penalization under specified provisions of a person  
 24 who experiences, or has a good faith belief that he or  
 25 she is experiencing, a drug-related overdose;  
 26 prohibiting a person from being penalized for a  
 27 violation of a condition of certain programs if that  
 28 person in good faith seeks medical assistance for  
 29 himself or herself or an individual experiencing, or

Page 1 of 4

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

24-00741A-19

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30 believed to be experiencing, a drug-related overdose;  
 31 prohibiting the protection from arrest, charge,  
 32 prosecution, or penalization for certain offenses from  
 33 being grounds for suppression of evidence in other  
 34 criminal prosecutions; providing an effective date.  
 35

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

38 Section 1. Section 562.112, Florida Statutes, is created to  
 39 read:

40 562.112 Alcohol-related overdoses; medical assistance;  
 41 immunity from arrest, charge, prosecution, and penalization.—

42 (1) A person who gives alcohol to an individual under 21  
 43 years of age and who, acting in good faith, seeks medical  
 44 assistance for the individual experiencing, or believed to be  
 45 experiencing, an alcohol-related overdose may not be arrested,  
 46 charged, prosecuted, or penalized for a violation of s. 562.11  
 47 or s. 562.111 if the evidence for such offense was obtained as a  
 48 result of the person's seeking medical assistance. The person  
 49 must remain at the scene until emergency medical services  
 50 personnel arrive and must cooperate with the emergency medical  
 51 services personnel and law enforcement officers at the scene.

52 (2) A person who experiences, or has a good faith belief  
 53 that he or she is experiencing, an alcohol-related overdose and  
 54 is in need of medical assistance may not be arrested, charged,  
 55 prosecuted, or penalized for a violation of s. 562.111 if the  
 56 evidence for such offense was obtained as a result of the  
 57 person's seeking medical assistance.

58 (3) Protection under this section from arrest, charge,

Page 2 of 4

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24-00741A-19

2019530

59 prosecution, or penalization for an offense listed in this  
 60 section may not be grounds for suppression of evidence in other  
 61 criminal prosecutions.

62 Section 2. Section 893.21, Florida Statutes, is amended to  
 63 read:

64 893.21 Drug-related overdoses; medical assistance; immunity  
 65 from arrest, charge, prosecution, and penalization.—

66 (1) A person acting in good faith who seeks medical  
 67 assistance for an individual experiencing, or believed to be  
 68 experiencing, a drug-related overdose may not be arrested,  
 69 charged, prosecuted, or penalized ~~pursuant to this chapter~~ for a  
 70 violation of s. 782.04(1)(a)3., s. 893.13, s. 893.135, or s.  
 71 893.147 ~~possession of a controlled substance~~ if the evidence for  
 72 such offense ~~possession of a controlled substance~~ was obtained  
 73 as a result of the person's seeking medical assistance.

74 (2) A person who experiences, or has a good faith belief  
 75 that he or she is experiencing, a drug-related overdose and is  
 76 in need of medical assistance may not be arrested, charged,  
 77 prosecuted, or penalized ~~pursuant to this chapter~~ for a  
 78 violation of s. 893.13, s. 893.135, or s. 893.147 ~~possession of~~  
 79 ~~a controlled substance~~ if the evidence for such offense  
 80 ~~possession of a controlled substance~~ was obtained as a result of  
 81 the person's seeking the overdose and the need for medical  
 82 assistance.

83 (3) A person who experiences, or has a good faith belief  
 84 that he or she is experiencing, a drug-related overdose and  
 85 receives medical assistance, or a person acting in good faith  
 86 who seeks medical assistance for an individual experiencing, or  
 87 believed to be experiencing, a drug-related overdose, may not be

24-00741A-19

2019530

88 penalized for a violation of a condition of pretrial release,  
 89 probation, or parole if the evidence for such violation was  
 90 obtained as a result of the person's seeking medical assistance.

91 ~~(4)(3)~~ Protection under ~~in~~ this section from arrest,  
 92 charge, prosecution, or penalization for an offense listed in  
 93 this section ~~possession offenses under this chapter~~ may not be  
 94 grounds for suppression of evidence in other criminal  
 95 prosecutions.

96 Section 3. This act shall take effect July 1, 2019.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** March 05, 2019

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I respectfully request that **Senate Bill #530**, relating to **Alcohol or Drug Overdose Prosecutions**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 24

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

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

April 10, 2019

*Meeting Date*

530

*Bill Number (if applicable)*

Topic Alcohol or Drug Overdose Prosecutions

*Amendment Barcode (if applicable)*

Name Andy Thomas

Job Title Public Defender, 2nd Judicial Circuit

Address 301 South Monroe Street, Suite 401

Phone 850-606-1014

*Street*

Tallahassee

FL

32301

Email andy.thomas@flpd2.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender 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)

04/10/2019

Meeting Date

SB 530

Bill Number (if applicable)

Topic ALCOHOL or DRUG OVERDOSE PROSECUTIONS

Amendment Barcode (if applicable)

Name CESAR GRAJALES

Job Title DIRECTOR OF COALITIONS

Address 200 COLLEGE AVE

Phone 786.260.9283

Street

TALLAHASSEE

FL

City

State

Zip

Email cgrajales@belibc.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AMERICANS FOR PROSPERITY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 418

INTRODUCER: Rules Committee, Banking and Insurance Committee, and Senator Simpson

SUBJECT: Essential Health Benefits Under Health Plans

DATE: April 10, 2019

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

| ANALYST    | STAFF DIRECTOR | REFERENCE | ACTION           |
|------------|----------------|-----------|------------------|
| 1. Johnson | Knudson        | BI        | <b>Fav/CS</b>    |
| 2. Lloyd   | Brown          | HP        | <b>Favorable</b> |
| 3. Johnson | Phelps         | RC        | <b>Fav/CS</b>    |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 418 requires the Office of Insurance Regulation to conduct a study to evaluate Florida's essential health benefits (EHB) benchmark plan and submit a report to the Governor, the President of the Senate, and the Speaker of the House. The study must include recommendations for changing the current EHB-benchmark plan to provide comprehensive care at a lower cost.

Starting in plan year 2020, the federal government is providing each state with greater flexibility in the selection of its EHB-benchmark plan. This flexibility may foster innovation in plan design and greater access to affordable coverage in the states. The options include:

- Selecting an EHB-benchmark plan that another state used for the 2017 plan year;
- Replacing one or more categories of EHBs under its EHB-benchmark plan used for the 2017 plan year with the same category or categories of EHB from the EHB-benchmark plan that another state used for the 2017 plan year; or
- Selecting a set of benefits that would become the state's EHB-benchmark plan.<sup>1</sup>

The bill also provides insurers and HMOs issuing or delivering individual or group policies or contracts in Florida that provide EHBs additional flexibility in developing affordable coverage

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<sup>1</sup> CMS.gov, *The Center for Consumer Information and Insurance Oversight, Information on Essential Health Benefits (EHB) Benchmark Plans* <https://www.cms.gov/ccio/resources/data-resources/ehb.html> (last viewed February 11, 2019).

options. Such coverage options must be substantially equivalent to the state EHB-benchmark plan and could be submitted to the OIR for review and approval.

The bill takes effect upon becoming a law.

## **II. Present Situation:**

### **Regulation of Insurance in Florida**

The Florida Office of Insurance Regulation (OIR) is responsible for the regulation of all activities of insurers and other risk-bearing entities that do business in the state.<sup>2</sup>

#### ***2019 Individual and Small Group Markets***

Nine health insurance companies writing individual policies or contracts submitted rate filings to the OIR in June 2018, which were compliant with the federal Patient Protection and Affordable Care Act (PPACA).<sup>3</sup> In August 2018, the OIR announced that premiums for the individual PPACA-compliant plans would increase an average of 5.2 percent effective January 1, 2019.<sup>4</sup> The average approved rate changes on the exchange plans ranged from -1.5 percent to a +9.8 percent. Only one insurer, Blue Cross Blue Shield, offers individual coverage in all 67 counties.<sup>5</sup> During the 2019 open enrollment period, 1,786,679 individuals enrolled in Florida plans through the federally administered exchange.<sup>6</sup> The 2020 open enrollment period will occur from November 1, 2019, through December 15, 2019, and plans sold during this span will start January 1, 2020.<sup>7</sup>

The OIR approved the 2019 rates for 14 small group insurers.<sup>8</sup> The weighted average change in approved rates from 2018 was 6.0 percent. The percentage change in approved rates from 2018 ranged from -11.8 percent to +14.5 percent. Florida Blue and United Healthcare (and affiliates) offer small group plans in every county.

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<sup>2</sup> The OIR is under the Financial Services Commission, which is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, which serves as the agency head of the commission. Section 20.121(3), F.S.

<sup>3</sup> The federal Patient Protection and Affordable Care Act was enacted on March 23, 2010, which created or expanded a number of health care protections and guarantees, provided states with a Medicaid eligibility expansion option, and made available individual health insurance subsidies, and tax credits based on income.

<sup>4</sup> Office of Insurance Regulation, *Individual PPACA Market Monthly Premiums for Plan Year 2019*, (August 22, 2018) available at <https://floir.com/siteDocuments/IndividualMarketPremiumSummary.pdf> (last viewed February 11, 2019). See also Press Release, Office of Insurance Regulation, *OIR Announces 2019 PPACA Individual Market Health Insurance Plan Rates*, (August 28, 2019) available at <https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2234> (last viewed February 11, 2019).

<sup>5</sup> OIR, *Individual Market County Offerings*, (August 22, 2019) available at <https://www.floir.com/sitedocuments/IndividualMarketCountyOfferings.pdf>, (last viewed February 11, 2019).

<sup>6</sup> CMS.gov, *Final Weekly Enrollment Snapshot for the 2019 Enrollment Period*, (January 3, 2019) available at <https://edit.cms.gov/newsroom/fact-sheets/final-weekly-enrollment-snapshot-2019-enrollment-period> (last viewed February 14, 2019).

<sup>7</sup> Centers for Medicare and Medicaid Services, *Dates and deadlines for 2019 health insurance*, *Healthcare.gov*, <https://www.healthcare.gov/quick-guide/dates-and-deadlines/> (last viewed March 28, 2019).

<sup>8</sup> OIR, *Small Group PPACA Market Monthly Premiums for Plan Year 2019*, (August 22, 2018) available at <https://www.floir.com/siteDocuments/SGMarketPremiumSummary.pdf> (last viewed February 14, 2019).

The initial deadline for the submission of 2020 rates by health insurance issuers is July 24, 2019, with certification of rates expected to be completed by early October, 2019.<sup>9</sup>

### **Patient Protection and Affordable Care Act (PPACA)**

The federal PPACA was signed into law on March 23, 2010.<sup>10</sup> Among its significant changes to the U.S. health insurance system are requirements for health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. Further, PPACA requires 10 categories of essential health benefits, rating and underwriting standards, mandatory review of rate increases, reporting of medical loss ratios and payment of rebates, internal and external appeals of adverse benefit determinations, and other requirements.<sup>11</sup> The PPACA preempts any state law that prevents the application of a provision of PPACA.<sup>12</sup>

### **Essential Health Benefits**

The PPACA requires non-grandfathered health plans in the individual and small group markets to cover essential health benefits (EHB), which include items and services in the following 10 benefit categories:

- Ambulatory patient services;
- Emergency services;
- Hospitalization;
- Pregnancy, maternity, and newborn care;
- Mental health and substance use disorder services, including behavioral health treatment;
- Prescription drugs;
- Rehabilitative and habilitative services and devices;
- Laboratory services;
- Preventive and wellness services and chronic disease management; and
- Pediatric services, including oral and vision care.<sup>13</sup>

### **State EHB-Benchmark Plans, Generally**

Rules adopted by the U.S. Department of Health and Human Services (HHS)<sup>14</sup> define EHB based on state-specific EHB benchmark plans. In plan year 2017, 2018, and 2019, the EHB-benchmark plan is defined as a plan that was sold in 2014. The HHS codified regulations to

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<sup>9</sup> Centers for Medicare and Medicaid Services, *Proposed Key Dates for Calendar Year 2019, Qualified Health Plan (QHP) Certification in the Federally Facilitated Exchanges (FfEs); Rate Review; and Risk Adjustment*, <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Key-Dates-Table-for-CY2019.pdf> (last viewed March 28, 2019).

<sup>10</sup> Pub. Law No. 111-148. On March 30, 2010, PPACA was amended by Pub. Law No. 111-152, the Health Care and Education Reconciliation Act of 2010.

<sup>11</sup> Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. 300gg et seq.).

<sup>12</sup> PPACA, s. 1321(d)

<sup>13</sup> HealthCare.gov, *What Marketplace health insurance plans cover*, available at: <https://www.healthcare.gov/coverage/what-marketplace-plans-cover/> (last viewed February 11, 2019).

<sup>14</sup> 45 CFR s. 156.100.

allow each state to select a benchmark plan that serves as a reference plan. According to the HHS, this approach seeks to balance coverage of essential health benefits (EHB) categories and affordability and provide flexibility for states as primary regulators of health insurance. States can choose a benchmark plan from among the following health insurance plans:

- The largest plan by enrollment in any of the three largest small group insurance products in the State's small group market;
- Any of the largest three state employee plans by enrollment;
- Any of the largest three national federal employer health benefit plans (FEHBP) plan options by enrollment; or
- The largest insured commercial non-Medicaid health maintenance organization (HMO) operating in the state.

All 10 essential health benefit categories must be included as a part of EHB; therefore, if the selected or default benchmark plan does not initially cover a category, the benchmark must be supplemented.<sup>15</sup> If one or more categories of benefits is missing in the benchmark plan, the insurer or HMO must supplement it.<sup>16</sup> States are required to supplement pediatric dental and vision with the benefits which are equivalent to the Federal Employees Dental and Vision Insurance Program (FEDVIP) dental plan<sup>17</sup> with the largest national enrollment or the benefits in the Children's Health Insurance Program.<sup>18</sup>

In Florida, the state did not select a plan; therefore, the default benchmark plan is the largest small group plan, which is supplemented to include pediatric dental. The small group plan also includes all of the mandated coverage required under Florida law.

### ***EHB-Benchmark Plans in 2020 and Thereafter***

For plan year 2020 and after, the HHS provides states with greater flexibility to update their EHB benchmark plans, if they so choose.<sup>19</sup> Such modifications are subject to HHS review and approval to become effective. States that opt not to exercise this flexibility continue to use the same benchmark plan applicable for the prior year.<sup>20</sup>

Under the new regulations, a state may modify its EHB-benchmark plan by:

- Selecting the EHB-benchmark plan that another state used for the 2017 plan year;
- Replacing one or more EHB categories of benefits in its EHB-benchmark plan used for the 2017 plan year with the same categories of benefits from another state's EHB-benchmark plan used for the 2017 plan year; or

<sup>15</sup> 45 CFR s. 156.110(b).

<sup>16</sup> 45 CFR s. 156.110(b)-(c).

<sup>17</sup> Federal Employees Dental and Vision Insurance Program, *available at* <https://www.benefeds.com/Portal/EducationSupport?EnsSubmit=EducationSupportMainCnt&ctoken=WyGpd9Pk> (last viewed March 20, 2019).

<sup>18</sup> The program, established pursuant to Title XXI of the U.S. Social Security Act, is a program jointly administered by the states and the United States Department of Health and Human Services that provides matching funds to states for health insurance for children from families with low to moderate household incomes. In Florida, the program is known as Florida KidCare.

<sup>19</sup> CMS.gov, *The Center for Consumer Information and Insurance Oversight, Information on Essential Health Benefits (EHB) Benchmark Plans*, available at <https://www.cms.gov/ccio/resources/data-resources/ehb.html> (last viewed February 11, 2019). For plan year 2020, no state has opted to permit insurers or HMOs to substitute benefits between benefit categories.

<sup>20</sup> 45 CFR s. 156.111(c).



- Selecting a set of benefits that would become the state's EHB-benchmark plan.<sup>21</sup>

The regulation allows an issuer of a plan offering EHB to substitute benefits for those provided in the EHB-benchmark plan under the following conditions:

- The substituted benefit is not a prescription drug benefit.<sup>22</sup>
- An issuer may substitute a benefit within the same category, unless prohibited by state law.
- For plan years beginning on or after January 1, 2020, an issuer may substitute benefits between categories if the state in which the plan will be offered has notified HHS that substitution between EHB categories is permitted.

If a state selects a new EHB benchmark plan for submission to the HHS, the plan will be required to include coverage for all 10 EHB categories of benefits, and the state will be required to confirm its plan to include coverage for each EHB category.<sup>23</sup> Further, a state is required to confirm that its new EHB-benchmark plan meets the applicable requirements<sup>24</sup> on scope of benefits, including that the state's EHB-benchmark plan provide a scope of benefits that is equal to, or greater than, to the extent any supplementation is required to provide coverage within each EHB category, the scope of benefits provided under a typical employer plan.<sup>25</sup> Because of these requirements, HHS concludes that the options at 45 CFR s. 156.111(a), do not allow a state to reduce substantially the level of coverage, and instead allow a state the option to adjust its EHB-benchmark plan.<sup>26</sup>

In the proposed rule published on January 24, 2019, the suggested deadline for the states to submit any revisions to its EHB benchmark selection for the 2021 plan year is May 6, 2019, and the suggested deadline for the 2022 plan year is May 8, 2020.<sup>27</sup>

### *Issuer Options*

If an issuer (health insurer or HMO) offers a policy or contract that includes substituted benefits, the issuer must:

- Provide benefits that are substantially equivalent to the EHB-benchmark plan;
- Provide an appropriate balance among the EHB categories such that benefits are not unduly weighted toward any category; and
- Provide benefits for diverse segments of the population.<sup>28</sup>

The issuer is required to submit to the state insurance regulator evidence of actuarial equivalence certified by a member of the American Academy of Actuaries and evidence that the plan meets other specified requirements.

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<sup>21</sup> 45 CFR s. 156.111(a).

<sup>22</sup> 45 CFR s. 156.115

<sup>23</sup> 45 CFR s. 156.111(e)(1).

<sup>24</sup> 45 CFR s. 156.111(b)

<sup>25</sup> 45 CFR s. 156.111(e)(2).

<sup>26</sup> 83 FR at 17011.

<sup>27</sup> Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2020; 84 Fed. Reg. 227, 283-284 (Jan. 24, 2019) (to be codified at 45 CFR s. 156.115).

<sup>28</sup> 45 CFR s. 156.111(e).

### III. Effect of Proposed Changes:

For purposes of Sections 1 and 2, the term, EHB-benchmark plans has the same meaning as provided in 45 CFR s. 156.20. This regulation provides that an EHB-benchmark plan is the standardized set of essential health benefits that must be met by a qualified health plan, as defined in 45 CFR s. 155.20, or other issuer as required by 45 CFR s. 147.150.

**Section 1** creates an undesignated section that requires the OIR to conduct a study to evaluate the state's current EHB-benchmark plan for non-grandfathered individual and group plans and options for changing the EHB-benchmark plan pursuant to 45 CFR s. 156.111 for future years.

- Consider EHB-benchmark plans and benefits under the 10 essential health benefits categories established under 45 CFR s. 156.110(a), which are used by the other 49 states;
- Compare the costs of benefits within such categories and overall costs of EHB-benchmark plans used by other states with the costs of benefits within the categories and overall costs of the current EHB-benchmark plan of this state; and
- Solicit and consider proposed individual and group health plans from health insurers and health maintenance organizations in developing recommendations for changes to the current EHB-benchmark plan.

The OIR is required to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that includes recommendations for changing the current EHB-benchmark plan. The report is due by October 30, 2019. The OIR must also include an analysis as to whether proposed plans submitted by health insurers and HMOs pursuant to Section 2 of the bill meet the requirements for EHB-benchmark plans under 45 CFR s. 156.111(b).

**Section 2** creates s. 627.443, F.S., to authorize an insurer or HMO, which issues or delivers individual or group policies or individual or group contracts in Florida, options for providing the 10 categories of essential health benefits mandated by PPACA. The insurer or HMO may provide essential health benefits by:

- Selecting one or more services or coverages for each of the required 10 essential health benefits categories from the list of essential health benefits required by any single state or multiple states;
- Selecting one or more services or categories from any one or more of the required categories of EHBs from one state or multiple states; or
- Selecting any combination of services or coverages required by any one or a combination of states to provide the required categories of EHBs.

An insurer or HMO is authorized to include any combination of services or coverages required by any one or a combination of states to provide the 10 categories of EHB required under PPACA in a policy or contract issued in this state.

Further, the section authorizes health insurers and HMOs to submit the policies or contracts authorized under this section to the OIR for consideration as part of the OIR's study of the state's EHBs, required under section 1 of the bill. A health insurer or HMO may also submit to the OIR for evaluation a policy or contract as equivalent to the current state EHB-benchmark plan or to any EHB-benchmark plan created in the future.

**Section 3** provides the bill takes effect upon becoming law.

**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:

Once the state submits a new EHB-benchmark plan and the federal government approves, it is anticipated that insurers and HMOs will be able to offer consumers more innovative coverage options at affordable prices for coverage that is substantially equivalent to the new state EHB-benchmark plan.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 627.6054 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/CS by Rules on April 10, 2019:**

The CS removes a duplicative provision in the bill.

**CS by Banking and Insurance on March 25, 2019:**

The CS:

- Requires the OIR to study options for revising the EHB-benchmark plan and to present recommendations to the Legislature and Governor.
- Allows insurers or HMOs to propose policies or contracts using alternate EHB-benchmark plans and to submit them to OIR for consideration as equivalent to the current EHB-benchmark plan or to any EHB-benchmark plan created in the future.
- Revises the effective date of the bill from July 1, 2019, to upon becoming a law.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 04/10/2019 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Simpson) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 67 - 73.

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

And the title is amended as follows:

Delete lines 18 - 21

and insert:

and the Legislature; creating s. 627.443, F.S.;

defining

By the Committee on Banking and Insurance; and Senator Simpson

597-03478-19

2019418c1

1 A bill to be entitled  
 2 An act relating to essential health benefits under  
 3 health plans; defining the terms "EHB-benchmark plan"  
 4 and "office"; requiring the Office of Insurance  
 5 Regulation to conduct a study evaluating this state's  
 6 current benchmark plan for essential health benefits  
 7 under the federal Patient Protection and Affordable  
 8 Care Act (PPACA) and options for changing the  
 9 benchmark plan for future plan years; requiring the  
 10 office, in conducting the study, to consider plans and  
 11 certain benefits used by other states and compare  
 12 costs with those of this state; requiring the office  
 13 to solicit and consider proposed health plans from  
 14 health insurers and health maintenance organizations  
 15 in developing recommendations; requiring the office,  
 16 by a certain date, to provide a report with certain  
 17 recommendations and a certain analysis to the Governor  
 18 and the Legislature; providing that health plans  
 19 created by health insurers and health maintenance  
 20 organizations may be submitted to the office for  
 21 certain purposes; creating s. 627.443, F.S.; defining  
 22 the terms "EHB-benchmark plan" and "PPACA";  
 23 authorizing health insurers and health maintenance  
 24 organizations to create new health insurance policies  
 25 and health maintenance contracts meeting certain  
 26 criteria for essential health benefits under PPACA;  
 27 providing that such criteria may be met by certain  
 28 means; providing construction; providing that such  
 29 policies and contracts created by health insurers and

597-03478-19

2019418c1

30 health maintenance organizations may be submitted to  
 31 the office for certain purposes; providing an  
 32 effective date.  
 33

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

35  
 36 Section 1. Study of state essential health benefits  
 37 benchmark plan; report.

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

39 (a) "EHB-benchmark plan" has the same meaning as provided  
 40 in 45 C.F.R. s. 156.20.

41 (b) "Office" means the Office of Insurance Regulation.

42 (2) The office shall conduct a study to evaluate this  
 43 state's current EHB-benchmark plan for nongrandfathered  
 44 individual and group health plans and options for changing the  
 45 EHB-benchmark plan pursuant to 45 C.F.R. s. 156.111 for future  
 46 plan years. In conducting the study, the office shall:

47 (a) Consider EHB-benchmark plans and benefits under the 10  
 48 essential health benefits categories established under 45 C.F.R.  
 49 s. 156.110(a) which are used by the other 49 states;

50 (b) Compare the costs of benefits within such categories  
 51 and overall costs of EHB-benchmark plans used by other states  
 52 with the costs of benefits within the categories and overall  
 53 costs of the current EHB-benchmark plan of this state; and

54 (c) Solicit and consider proposed individual and group  
 55 health plans from health insurers and health maintenance  
 56 organizations in developing recommendations for changes to the  
 57 current EHB-benchmark plan.

58 (3) By October 30, 2019, the office shall submit a report

597-03478-19

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to the Governor, the President of the Senate, and the Speaker of the House of Representatives which must include recommendations for changing the current EHB-benchmark plan to provide comprehensive care at a lower cost than this state's current EHB-benchmark plan. In its report, the office shall provide an analysis as to whether proposed health plans it receives under paragraph (2)(c) meet the requirements for an EHB-benchmark plan under 45 C.F.R. s. 156.111(b).

(4) Health plans created by health insurers and health maintenance organizations under this section:

(a) May be submitted to the office for consideration as part of the study under this section; and

(b) May also be submitted to the office for evaluation as equivalent to the current state EHB-benchmark plan or to any EHB-benchmark plan created in the future.

Section 2. Section 627.443, Florida Statutes, is created to read:

627.443 Essential health benefits.—

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

(a) "EHB-benchmark plan" has the same meaning as provided in 45 C.F.R. s. 156.20.

(b) "PPACA" has the same meaning as in s. 627.402.

(2) A health insurer or health maintenance organization issuing or delivering an individual or a group health insurance policy or health maintenance contract in this state may create a new health insurance policy or health maintenance contract that:

(a) Must include at least one service or coverage under each of the 10 essential health benefits categories under 42 U.S.C. s. 18022(b) which are required under PPACA;

597-03478-19

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(b) May fulfill the requirement in paragraph (a) by selecting one or more services or coverages for each of the required categories from the list of essential health benefits required by any single state or multiple states; and

(c) May comply with paragraphs (a) and (b) by selecting one or more services or coverages from any one or more of the required categories of essential health benefits from one state or multiple states.

(3) This section specifically authorizes an insurer or health maintenance organization to include any combination of services or coverages required by any one or a combination of states to provide the 10 categories of essential health benefits required under PPACA in a policy or contract issued in this state.

(4) Health insurance policies and health maintenance contracts created by health insurers and health maintenance organizations under this section:

(a) May be submitted to the office for consideration as part of the office's study of this state's essential health benefits benchmark plan; and

(b) May also be submitted to the office for evaluation as equivalent to the current state EHB-benchmark plan or to any EHB-benchmark plan created in the future.

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Benacquisto, Chair  
Committee on rules

**Subject:** Committee Agenda Request

**Date:** April 4, 2019

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I respectfully request that **Senate Bill #418**, relating to essential health benefits, be placed on the:

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

A handwritten signature in black ink, appearing to read "Wilton Simpson", is written over a horizontal line.

Senator Wilton Simpson  
Florida Senate, District 10



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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 600

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Gibson and others

SUBJECT: Public Records/Meter-derived Data and Billing Information

DATE: April 9, 2019      REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Wiehle  | Imhof          | IT        | <b>Fav/CS</b>    |
| 2. | Ponder  | McVane         | GO        | <b>Favorable</b> |
| 3. | Wiehle  | Phelps         | RC        | <b>Favorable</b> |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 600 amends s. 119.0713(5), F.S., to exempt from public disclosure and inspection requirements customer meter-derived data and billing information in increments of less than one billing cycle held by a utility owned or operated by a unit of local government. The bill provides legislative findings as to the public necessity for the exemption and the balancing of public and private harm.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded exemption for public records and public meetings. The bill creates a public meeting exemption, therefore it requires a two-thirds vote for final passage.

The bill takes effect July 1, 2019.

## II. Present Situation:

### Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup> In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that:

[i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

Only Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of each of the House and the Senate.<sup>9</sup> The exemption must explicitly lay out the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>10</sup> A statutory exemption, which does not meet these two criteria, may be unconstitutional and may not be judicially saved.<sup>11</sup>

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

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

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST. art. I, s. 24(c).

<sup>10</sup> *Id.*

<sup>11</sup> *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>12</sup> Records designated “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>13</sup>

### **Current Public Records Exemption for Specified Types of Information Held by a Utility Owned or Operated by a Unit of Local Government**

Section 119.011, F.S., defines the term “utility” to mean a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

Subsection 119.0713(5), F.S., exempts the following information held by a utility owned or operated by a unit of local government:

- Information related to the security of the technology, processes, or practices of a utility owned or operated by a unit of local government that are designed to protect the utility’s networks, computers, programs, and data from attack, damage, or unauthorized access, which information, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information related to the security of existing or proposed information technology systems or industrial control technology systems of a utility owned or operated by a unit of local government, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.

The exemption applies to such information before, on, or after the effective date of this exemption, March 24, 2016. The exemption is subject to the OGSR and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

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

**Section 1** amends s. 119.0713(5), F.S., which currently exempts from public disclosure specified types of information held by a utility<sup>14</sup> owned or operated by a unit of local government. The bill expands the current public records exemption to include customer meter-derived data and billing information in increments of less than one billing cycle.

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declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>12</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>13</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

<sup>14</sup> Section 119.011, F.S., defines the term “utility” to mean a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

This section also delays the scheduled repeal of the public records exemptions for information held by a utility owned or operated by a unit of local government from October 2021 to October 2024.

**Section 2** sets forth the required public necessity statement. The Legislature finds that it is a public necessity that customer meter-derived data and billing information in increments less than one billing cycle held by a utility that is owned or operated by a unit of local government be exempt from public records law requirements. The Legislature finds that safeguarding customer meter-derived data and billing information in increments of less than one billing cycle is of the utmost importance. Smart meters, which can record and transmit detailed data on a customer's use of utility services, present unique security concerns. These concerns were addressed in a report released in October 2010 by the United States Department of Energy titled "Data Access and Privacy Issues Related to Smart Grid Technologies."<sup>15</sup> The report recommended that customer data be protected from release to third parties. This detailed customer data can be used to specifically identify minute-by-minute usage patterns, including the exact appliance or service being used. This information creates significant security issues for both businesses and homeowners.

**Section 3** provides that the bill takes effect July 1, 2019.

#### **IV. Constitutional Issues:**

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

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

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

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded exemption for public records and public meetings. The bill creates a public meeting exemption, therefore it requires a two-thirds vote for final passage.

##### ***Vote Requirement***

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding exemptions to the public records and public meetings requirements. This bill enacts new exemption; thus, the bill requires a two-thirds vote to be enacted.

##### ***Public Necessity Statement***

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding exemptions to the public records and public meetings requirements to state with

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<sup>15</sup> Available at [https://www.energy.gov/sites/prod/files/gcprod/documents/Broadband\\_Report\\_Data\\_Privacy\\_10\\_5.pdf](https://www.energy.gov/sites/prod/files/gcprod/documents/Broadband_Report_Data_Privacy_10_5.pdf) (last accessed March 6, 2019).

specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires exemptions to the public records and public meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect detailed customer data that can be used to specifically identify minute-by-minute usage patterns. The bill makes exempt meter-derived data and billing information in increments less than one billing cycle. The bill appears to be no broader than necessary to accomplish its stated purpose.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The private sector will be subject to the cost associated with an agency making redactions in response to public records requests.

**C. Government Sector Impact:**

Utilities owned or operated by a unit of local government may incur additional costs associated with performing redactions of customer meter-derived data and billing information in increments of less than one billing cycle in response to public records requests. However, the cost is anticipated to be insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.0713 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 March 6, 2019:**

The committee substitute revises the findings of public necessity to more completely identify the risks to customers whose information might otherwise be disclosed.

- B. **Amendments:**

None.

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

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By the Committee on Innovation, Industry, and Technology; and  
Senators Gibson and Bean

580-02752-19

2019600c1

A bill to be entitled

An act relating to public records; amending s.  
119.0713, F.S.; exempting from public records  
requirements customer meter-derived data and billing  
information in increments of less than one billing  
cycle which is held by certain utilities; providing a  
statement of public necessity; providing an effective  
date.

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

Section 1. Subsection (5) of section 119.0713, Florida  
Statutes, is amended to read:

119.0713 Local government agency exemptions from inspection  
or copying of public records.—

(5)(a) The following information held by a utility owned or  
operated by a unit of local government is exempt from s.  
119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Information related to the security of the technology,  
processes, or practices of a utility owned or operated by a unit  
of local government that are designed to protect the utility's  
networks, computers, programs, and data from attack, damage, or  
unauthorized access, which information, if disclosed, would  
facilitate the alteration, disclosure, or destruction of such  
data or information technology resources.

2. Information related to the security of existing or  
proposed information technology systems or industrial control  
technology systems of a utility owned or operated by a unit of  
local government, which, if disclosed, would facilitate

580-02752-19

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unauthorized access to, and alteration or destruction of, such  
systems in a manner that would adversely impact the safe and  
reliable operation of the systems and the utility.

3. Customer meter-derived data and billing information in  
increments less than one billing cycle.

(b) This exemption applies to such information held by a  
utility owned or operated by a unit of local government before,  
on, or after the effective date of this exemption.

(c) This subsection is subject to the Open Government  
Sunset Review Act in accordance with s. 119.15 and shall stand  
repealed on October 2, 2024 ~~2021~~, unless reviewed and saved from  
repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public  
necessity that customer meter-derived data and billing  
information in increments less than one billing cycle held by a  
utility that is owned or operated by a unit of local government  
be exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
Article I of the State Constitution.

(2) The Legislature finds that safeguarding customer meter-  
derived data and billing information in increments of less than  
one billing cycle is of the utmost importance. Smart meters,  
which can record and transmit detailed data on a customer's use  
of utility services, present unique security concerns. These  
concerns were addressed in a report released in October 2010 by  
the United States Department of Energy titled "Data Access and  
Privacy Issues Related to Smart Grid Technologies." The report  
recommended that customer data be protected from release to  
third parties. This detailed customer data can be used to  
specifically identify minute-by-minute usage patterns, including

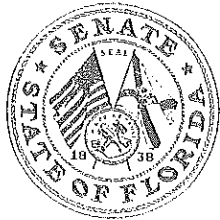
580-02752-19

2019600c1

59 the exact appliance or service being used. This information  
60 creates significant security issues for both businesses and  
61 homeowners.

62 Section 3. This act shall take effect July 1, 2019.





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Rules, *Vice Chair*  
Appropriations  
Innovation, Industry, and Technology  
Judiciary

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission

### SENATOR AUDREY GIBSON

*Minority Leader*  
6th District

April 2, 2019

Senator Lizbeth Benacquisto, Chair  
Committee on Rules  
402 Senate Building  
404 South Monroe Street  
Tallahassee, Florida 32399-1100

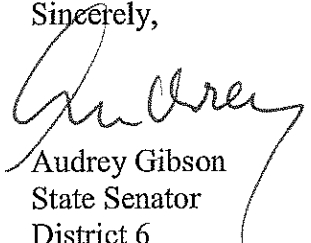
  
Chair Benacquisto:

I respectfully request that SB 600, relating to customer information of municipal utilities be placed on the next committee agenda.

SB 600 provides a public records exemption for customer utility usage data on a less than 30-day billing cycle as the data is in real-time and patterns can be identified as to when a customer is using their household utilities and when they are not. This signals when someone is home or not, or when a business is opened or closed, creating a security risk for the customer. The bill passed unanimously in the first and second committees of reference.

Thank you for your kind consideration.

Sincerely,

  
Audrey Gibson  
State Senator  
District 6

101 East Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553  
200 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-10-19

Meeting Date

600

Bill Number (if applicable)

Topic PUBLIC RECORDS / METER-DERIVED DATA BILLING INFO Amendment Barcode (if applicable)

Name KEVIN NOONAN

Job Title DIRECTOR, LEGISLATIVE AFFAIRS

Address 100 W. ANDERSON ST.

Street

Phone 407. 466. 1287

ORLANDO, FL 32801

City

State

Zip

Email KNOONAN@FLS.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ORLANDO UTILITIES COMMISSION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-10-19  
Meeting Date

SB 600  
Bill Number (if applicable)

Topic Public Records/Meter-derived Data & Billing Info Amendment Barcode (if applicable)

Name Suzanne Goss

Job Title Government Relations Specialist

Address 21 W. Church St Phone 904-665-8331  
Street

Jacksonville FL 32202 Email gossSE@jea.com  
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing JEPA

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

4/10/2019  
Meeting Date

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

SB 600  
Bill Number (if applicable)

Topic Public Records / Meter-Derived Data

Amendment Barcode (if applicable)

Name Nicole Albers

Job Title Public Affairs Manager

Address 417 E College Ave

Phone 850 549 5056

TLH FL 32301  
City State Zip

Email halbers@publicpower.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Municipal Electric Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 702

INTRODUCER: Senator Lee

SUBJECT: Qualified Blind Trusts

DATE: April 9, 2019

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

| ANALYST     | STAFF DIRECTOR | REFERENCE | ACTION           |
|-------------|----------------|-----------|------------------|
| 1. Mitchell | Roberts        | EE        | <b>Favorable</b> |
| 2. Hackett  | McVaney        | GO        | <b>Favorable</b> |
| 3. Mitchell | Phelps         | RC        | <b>Favorable</b> |

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## I. Summary:

SB 702 repeals section 112.31425, Florida Statutes (F.S.). Under current law, the placement of assets and investments in a qualified blind trust by a public officer avoids conflicts of interest that might otherwise require that the interests be divested or that the public officer recuse himself or herself.

The bill repeals the statute that addresses qualified blind trusts, eliminating the operation and parameters of the described trust. Also repealed is the statutory determination that a public officer who holds a beneficial interest in a qualified blind trust does not have a statutorily prohibited conflict of interest with regard to matters pertaining to that interest.

The bill repeals language that provides that a public officer holding a beneficial interest in a qualified blind trust is not required to report on his or her financial disclosure forms any source of income to the blind trust as a secondary source of income, but otherwise does not address requirements for financial disclosure reporting in the Florida Constitution<sup>1</sup> or elsewhere in chapter 112, F.S.<sup>2</sup>

## II. Present Situation:

### Enactment of Section 112.31425, F.S.

In 2013, the Legislature enacted a comprehensive ethics reform bill<sup>3</sup> that included, among many other provisions, the creation of a statute<sup>4</sup> that codifies a “qualified blind trust” as a mechanism

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<sup>1</sup> FLA. CONST. art. II, s. 8.

<sup>2</sup> See ss. 112.3144 and 112.3145, F.S.

<sup>3</sup> CS/SB 2 (2013 Reg. Session), Ch. 2013-36, s. 5, Laws of Fla.

<sup>4</sup> Section 112.31425, F.S.

for addressing conflicts of interest issues. Before the 2013 legislation, there was no provision of the Florida Statutes addressing the use of blind trusts by public officers.

Florida's Nineteenth Statewide Grand Jury convened in 2010 to investigate public corruption and develop recommendations for strengthening current laws. Noting that other states and the federal government have authorized the use of blind trusts by public officers, the grand jury recommended that Florida public officials use blind trusts to avoid conflicts of interest. The grand jury concluded that the use of blind trusts eliminates the appearance of impropriety for the policy decisions of public officials.<sup>5</sup> In its 2012 annual report, the Florida Commission on Ethics lent its support to the enactment of laws prescribing the use of blind trusts by Florida Cabinet members.<sup>6</sup> The enactment of s. 112.31425, F.S., in 2013 incorporated the recommendations of the Nineteenth Statewide Grand Jury and the Florida Commission on Ethics. The law was modeled after its federal counterpart.

### **Qualified Blind Trusts**

Florida's qualified blind trust statute contains a legislative finding "that if a public officer creates a trust and does not control the interests held by the trust, his or her official actions will not be influenced or appear to be influenced by private considerations."<sup>7</sup> The statute prescribes that "if a public officer holds a beneficial interest in a qualified blind trust as described in this section, he or she does not have a conflict of interest prohibited under s. 112.313(3) or (7), F.S., or a voting conflict of interest under s. 112.3143, F.S., with regard to matters pertaining to that interest."<sup>8</sup>

Under the statute, a public officer may create a qualified blind trust if it meets the following requirements:

- The appointed trustee must be a bank, trust company, or other institutional fiduciary, or an attorney, certified public accountant, broker, or investment advisor;
- The individual responsible for managing the trust may not be:
  - the public officer's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin, or the spouse of any such person;
  - an elected or appointed public officer or a public employee;
  - a person appointed to serve in an agency by the public officer or by a public officer or public employee supervised by the public officer; or
  - a business associate or principal of the public officer;<sup>9</sup>
- Assets in the trust must be free of any restrictions on their transfer or sale and the trust may not contain investments or assets the transfer of which without the public officer's knowledge is improbable or impractical;<sup>10</sup>

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<sup>5</sup> See 19<sup>th</sup> Statewide Grand Jury, Case No. SC 09-1910, First Interim Report, *A Study of Public Corruption in Florida & Recommended Solutions* 69-70 (December 29, 2010).

<sup>6</sup> Florida Commission on Ethics, *Annual Report to the Florida Legislature for Calendar Year 2012*.

<sup>7</sup> Section 112.31425(1), F.S.

<sup>8</sup> Section 112.31425(2), F.S.

<sup>9</sup> Section 112.31425(6)(a), F.S.

<sup>10</sup> Section 112.31425(6)(b), F.S.

- The trust agreement must:
  - state that its purpose is to remove from the grantor control and knowledge of investment of trust assets so that conflicts of the grantor's interests are eliminated;
  - give the trustee complete discretion to manage the trust;
  - prohibit communication between the trustee and the public officer, or the person who has a beneficial interest in the trust, concerning the holdings or sources of income of the trust;
  - provide that the trust tax return is prepared by the trustee and that any information relating thereto is not disclosed to the public officer or to the person who has a beneficial interest;
  - permit the trustee to notify the public officer of the date of disposition and value at disposition of any original investment or interest in real property to the extent required by federal tax law; and
  - prohibit the trustee from disclosing to the public officer or the person who has a beneficial interest any information concerning replacement assets to the trust;<sup>11</sup> and
- The public officer must file with the Commission on Ethics within 5 business days after the trust agreement is executed a notice containing:
  - the date of execution of the agreement;
  - the name and address of the trustee;
  - acknowledgment by the trustee that he or she has agreed to serve as trustee;
  - a copy of the trust agreement or certification by the trustee that the trust meets all of the requirements of s. 112.31425, F.S.; and
  - a complete list of the assets placed in the trust that the public officer would be required to disclose pursuant to s. 112.3144, F.S., (Full and public disclosure of financial interests – Form 6) or s. 112.3145, F.S., (Disclosure of financial interests and clients represented before agencies – Form 1). s. 112.31425(6), F.S.<sup>12</sup>

A public officer may not attempt to influence or exercise any control over decisions regarding the management of assets in a qualified blind trust. Neither the public officer nor any person having a beneficial interest in the qualified blind trust may make any effort to obtain information with respect to the holdings of the trust.<sup>13</sup> A public officer or the person who has a beneficial interest may not have any direct or indirect communication with the trustee with respect to the trust, with limited exceptions.<sup>14</sup>

A public officer must report the beneficial interest in the qualified blind trust and its value as an asset on his or her financial disclosure form, if the value is required to be disclosed. The public officer must also report the blind trust as a primary source of income on his or her financial disclosure forms and its amount, if the amount of income is required to be disclosed.<sup>15</sup> If the trust is revoked or if the covered public official learns of any replacement assets that have been added to the trust, the public official must file an amendment to his or her most recent financial disclosure statement to disclose the previously unreported pro rata share of the trust's interest in investments or income.<sup>16</sup>

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<sup>11</sup> Section 112.31425(6)(c), F.S.

<sup>12</sup> Section 112.31425(6)(d), F.S.

<sup>13</sup> Section 112.31425(3), F.S.

<sup>14</sup> Section 112.31425(4), F.S.

<sup>15</sup> Section 112.31425(5), F.S.

<sup>16</sup> Section 112.31425(7), F.S.

A public officer holding a beneficial interest in a qualified blind trust is not required to report on his or her financial disclosure forms any source of income to the blind trust as a secondary source of income.<sup>17</sup>

### **Constitutional Challenge to Section 112.31425, F.S.**

In 2014, the constitutionality of s. 112.31425, F.S., was challenged. The petitioner sought a declaratory judgment that because the statute allows public officers to file financial disclosure statements without disclosing the value of individual assets contained within qualified blind trusts, it violates the requirement of full and public financial disclosure found in Article II, section 8 of the Florida Constitution. Upon appeal from a circuit court judgment finding the statute constitutional, the First District Court of Appeal vacated the declaratory judgment entered by the court because the petitioner failed to present a justiciable controversy. During the period of litigation, no public officer had created or reported a qualified blind trust in any required financial disclosure.<sup>18</sup>

### **Blind Trust Provisions for Federal Public Officials**

There is no federal statute which requires federal public officials to place assets into a blind trust upon election or while serving. However, the Ethics in Government Act of 1978 formally established “qualified blind trusts” that may be created by federal public officials on their own initiative to avoid potential conflict issues or to ease reporting burdens.<sup>19</sup> Qualified blind trusts simplify disclosure, which requires identification of the blind trust and overall income from it, as opposed to identification and income of all individual underlying assets and transactions.<sup>20</sup>

A member of Congress must disclose in his or her financial disclosure report the category of value of the total cash value of his or her interest in a qualified blind trust.<sup>21</sup> A member of Congress need not report the holdings of or the source of income from any of the holdings of a qualified blind trust, but must report the category of value of the amount of income received by him or her, his or her spouse, or any dependent child from the qualified blind trust.<sup>22</sup>

The requirements and limitations of a qualified blind trust under federal law are similar to Florida’s statute,<sup>23</sup> but with stricter oversight and enforcement provisions. The proposed blind trust instrument and the proposed trustee must be approved by the federal public official’s supervising ethics office.<sup>24</sup> In addition, the U.S. Attorney General may bring a civil action in United States district court against any individual who knowingly and willfully violates prohibitions against disclosure or solicitation of information. The court in which such an action is brought may assess a civil penalty in any amount up to \$10,000. The Attorney General may

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<sup>17</sup> Section 112.31425(5), F.S.

<sup>18</sup> *Apthorp v. Detzner*, 162 So. 3d 236 (Fla. 1<sup>st</sup> DCA 2015).

<sup>19</sup> Ethics in Government Act of 1978, Pub. L. No. 95-521, 92 Stat. 1824.

<sup>20</sup> 5 U.S.C. app. s. 102(f).

<sup>21</sup> 5 U.S.C. app. s. 102(a)(8).

<sup>22</sup> 5 U.S.C. app. s. 102(f)(2).

<sup>23</sup> Section 112.31425, F.S.

<sup>24</sup> 5 U.S.C. app. s. 102(f)(3).



also bring a civil action in United States district court against any individual who negligently violates prohibitions against disclosure or solicitation of information. In such case, a civil penalty may be assessed up to \$5,000.<sup>25</sup>

### III. Effect of Proposed Changes:

**Section 1** repeals section 112.31425, F.S., which permitted the placing of such assets and investments in a qualified blind trust to avoid a requirement that the interests be divested or that the public officer recuse himself or herself.

The bill repeals the statutory provision that addresses qualified blind trusts, eliminating the operation and parameters of the described trust. Also repealed is the statutory determination that a public officer who holds a beneficial interest in a qualified blind trust does not have a conflict of interest prohibited under section 112.313(3) or (7), F.S., (doing business with one's agency and conflicting employment or contractual relationship) or a voting conflict of interest under section 112.3143, F.S., with regard to matters pertaining to that interest.

The repeal of section 112.31425, F.S., removes language that requires a public officer who holds a beneficial interest in a qualified blind trust to:

- File a notice setting forth the following with the Commission on Ethics within 5 business days after the qualified blind trust agreement is executed:
  - the date the agreement was executed;
  - the name and address of the trustee;
  - an acknowledgment by the trustee that he or she has agreed to serve as trustee;
  - a copy of the trust agreement or a certification by the trustee that the trust meets all of the requirements of section 112.31425, F.S. (qualified blind trusts); and
  - a complete list of assets placed in the trust that the public officer would be required to disclose in a full and public disclosure of financial interests (CE Form 6) or a disclosure of financial interests (CE Form 1);
- Report the beneficial interest in the qualified blind trust and its value as an asset on his or her financial disclosure forms and report the blind trust as a primary source of income and the amount of that income on his or her financial disclosure forms; and
- File an amendment to his or her most recent financial disclosure statement, if the trust is revoked or if the covered public official learns of any replacement assets that have been added to the trust, to disclose the previously unreported pro rata share of the trust's interest in investments or income.

The bill does not address the blind trust legal arrangement.

Section 8, Art. II of the Florida Constitution, requiring full and public disclosure of financial interests to mean reporting net worth and identifying each asset and liability in excess of \$1,000 and its value; section 112.3144, F.S., specifying the requirements for full and public disclosure of financial interests (CE Form 6); and section 112.3145, F.S., specifying the requirements for disclosure of financial interests (CE Form 1) are not affected by the bill.

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<sup>25</sup> 5 U.S.C. app. s. 102(f)(6).

The repeal of s. 112.31425, F.S. removes the provision that a public officer holding a beneficial interest in a qualified blind trust is not required to report on his or her financial disclosure forms any source of income to the blind trust as a secondary source of income.

**Section 2** provides that the bill takes effect on January 1, 2020.

#### **IV. Constitutional Issues:**

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

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

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

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

None.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill repeals section 112.31425 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

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

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By Senator Lee

20-01111A-19

2019702\_\_

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A bill to be entitled

An act relating to qualified blind trusts; repealing  
s. 112.31425, F.S., relating to qualified blind  
trusts; providing an effective date.

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

Section 1. Section 112.31425, Florida Statutes, is  
repealed.

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



*The Florida Senate*

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** March 27, 2019

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I respectfully request that **Senate Bill #702**, relating to Qualified Blind Trusts, be placed on the:

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

A handwritten signature in cursive script that reads "Tom Lee".

---

Senator Tom Lee  
Florida Senate, District 20

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7032

INTRODUCER: Infrastructure and Security Committee

SUBJECT: OGSR/Emergency Planning Assistance/Division of Emergency Management

DATE: April 9, 2019

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION                                |
|----|---------|----------------|-----------|---------------------------------------|
|    | Miller  | Miller         |           | <b>IS Submitted as Committee Bill</b> |
| 1. | Ponder  | McVane         | GO        | <b>Favorable</b>                      |
| 2. | Miller  | Phelps         | RC        | <b>Favorable</b>                      |

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## **I. Summary:**

SB 7032 amends s. 252.905, F.S. to save from repeal the current exemption from public records disclosure for any information provided by individuals and businesses to the Division of Emergency Management for the purposes of being provided assistance with emergency planning. The bill removes the scheduled repeal date of the exemption, thus continuing the exemption.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect on October 1, 2019.

## **II. Present Situation:**

### **Public Records Law**

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that:

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(a).

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

[i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.<sup>9</sup> The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>10</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>11</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>12</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>13</sup>

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<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>12</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>13</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

## Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>14</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>15</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>16</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>17</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>18</sup> or
- It protects trade or business secrets.<sup>19</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>20</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>21</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>22</sup>

<sup>14</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

<sup>15</sup> Section 119.15(3), F.S.

<sup>16</sup> Section 119.15(6)(b), F.S.

<sup>17</sup> Section 119.15(6)(b)1., F.S.

<sup>18</sup> Section 119.15(6)(b)2., F.S.

<sup>19</sup> Section 119.15(6)(b)3., F.S.

<sup>20</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>21</sup> FLA. CONST. art. I, s. 24(c).

<sup>22</sup> Section 119.15(7), F.S.



## **Emergency Preparedness Plans for Individuals and Businesses**

The Florida Division of Emergency Management (FDEM), established in the Executive Office of the Governor,<sup>23</sup> is the state's emergency management agency. The State Emergency Management Act directs the FDEM to oversee and manage emergency preparedness, response, recovery and mitigation programs in Florida.<sup>24</sup> Among the FDEM's statutorily required duties is the requirement to institute a multifaceted public educational campaign on emergency preparedness.<sup>25</sup> The campaign must promote the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster.<sup>26</sup> In 2006, the FDEM launched its "Get a Plan" campaign to encourage individuals, families, and businesses to develop disaster plans in preparation for and in response to natural or manmade disasters.

The "Get a Plan" campaign includes an online preparedness tool to allow individuals, families, and businesses to create an emergency plan tailored to the specific needs of the user.<sup>27</sup> The tool allows users to establish a profile with a user name and password to access the online tool at their convenience to adjust or update any aspect of their emergency response plan. Users may also create an emergency plan without saving a profile.

Emergency plans may include sensitive information such as alternative locations for families to meet or business relocation in the event of building damage; business contacts, including suppliers and employees; backup suppliers for key materials and services depended upon by businesses; and important software, records, and documents a business needs to operate.

Since July 2014, 2,774 users have created a profile on the "Get a Plan" website and 55,186 emergency plans have been created. Of the total plans created, 51,612 plans were created by users who chose not to save a profile and 3,574 plans were created by users who created a profile. One profile can contain both a family plan as well as a business plan.<sup>28</sup>

## **Open Government Sunset Review of the Public Record Exemption for Emergency Planning Information**

In 2014, the Legislature created s. 252.905, F.S., to exempt from the public disclosure requirements any information furnished by a person or business to the FDEM for the purpose of being provided assistance with emergency planning.<sup>29</sup> Under this exemption, information input by individuals and businesses in an emergency plan on FDEM's "Get a Plan" website is exempt from disclosure requirements under public records law. This public record exemption would also apply to any future FDEM programs or applications created to assist individuals and businesses with emergency planning.

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<sup>23</sup> Section 14.2016, F.S.

<sup>24</sup> Section 252.31, F.S.

<sup>25</sup> Section 252.35(2)(i), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> FDEM's "Get a Plan" online emergency preparedness tool available at: <https://apps.floridadisaster.org/getaplan/> (last visited January 8, 2019).

<sup>28</sup> E-mail correspondence with FDEM staff. August 29, 2018, on file with the Committee on Infrastructure and Security.

<sup>29</sup> Ch. 2014-188, Laws of Fla.

In creating the exemption, the Legislature found that exempting information furnished by a person or business to the FDEM for the purpose of being provided assistance with emergency planning is a public necessity. The Legislature recognized emergency plans may contain sensitive information for individuals, families and businesses, and without the exemption, the effective and efficient administration of the FDEM's public awareness program would be significantly impaired. The Legislature further found that the potential disclosure of sensitive information has served as a disincentive for creating a disaster plan, and the harm that may result from the release of personal or business information obtained by the FDEM outweighs any public benefit that may be derived from disclosure of the information.<sup>30</sup>

Section 252.905, F.S., is subject to the OGSR and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Based upon a review of this public records exemption under the OGSR and discussions with the FDEM, the professional staff of the Senate Infrastructure and Security Committee recommends that the Legislature retain the public records exemption established in s. 252.905, F.S.

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

The bill is based on an Open Government Sunset Review of a public records exemption for information furnished by a person or business to the FDEM for the purpose of being provided assistance with emergency planning. The justification upon which the public records exemption is based remains valid.

The bill amends s. 252.905, F.S., to delete the scheduled repeal of the current public records exemption for individual and business emergency planning information held by the FDEM. These records will continue to be exempt from public disclosure.

The bill takes effect October 1, 2019.

### **IV. Constitutional Issues:**

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

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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

##### ***Vote Requirement***

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption

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<sup>30</sup> Section 2, ch. 2014-188, Laws of Fla.

beyond its current date of repeal; thus, the bill does not require an extraordinary vote for enactment.

***Public Necessity Statement***

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect information provided by individuals and businesses to the FDEM for the purposes of being provided assistance with emergency planning. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with the FDEM making redactions in response to a public records requests.

C. Government Sector Impact:

The FDEM will continue to incur costs related to the redaction of records in response to public record requests.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 252.905 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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By the Committee on Infrastructure and Security

596-02378-19

20197032\_\_

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 252.905, F.S., which provides an exemption from public records requirements for information furnished by a person or a business to the Division of Emergency Management for emergency planning assistance; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 252.905, Florida Statutes, is amended to read:

252.905 Emergency planning information; public records exemption.—

~~(1)~~ Any information furnished by a person or a business to the division for the purpose of being provided assistance with emergency planning is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information held by the division before, on, or after the effective date of this exemption.

~~(2) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** April 3, 2019

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I respectfully request that **Senate Bill #7032**, relating to OGSR/Emergency Planning Assistance/  
Division of Emergency Management, be placed on the:

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

A handwritten signature in cursive script that reads "Tom Lee".

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Senator Tom Lee  
Florida Senate, District 20

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1002

INTRODUCER: Infrastructure and Security Committee and Senator Hutson

SUBJECT: Motor Vehicles and Railroad Trains

DATE: April 9, 2019

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

| ANALYST     | STAFF DIRECTOR | REFERENCE | ACTION           |
|-------------|----------------|-----------|------------------|
| 1. Price    | Miller         | IS        | <b>Fav/CS</b>    |
| 2. Erickson | Jones          | CJ        | <b>Favorable</b> |
| 3. Price    | Phelps         | RC        | <b>Favorable</b> |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1002 clarifies the duties of law enforcement with respect to the collection of information required for crash reports in the event of a motor vehicle crash involving a railroad train.

The bill revises the definition of “railroad train” to provide that a railroad train is not a motor vehicle for purposes of the Florida Uniform Traffic Control Law.

The bill specifies that in the event that a motor vehicle crash involves a railroad train, the collection of certain required crash report information is at the discretion of the law enforcement officer having jurisdiction to investigate the crash.

Current law requires that the crash report contain the names of insurance companies for the “respective parties” involved in the crash, unless not available. The bill amends this requirement to specify it applies to insurance companies of the motor vehicles involved in the crash.

The bill provides a railroad train crew member or a passenger on a railroad train is not a passenger for purposes of completing a crash report. However, in the event of a motor vehicle crash involving a railroad train, a railroad train crew member must furnish: date, time, and location of the crash; description of the vehicles involved in the crash; and the names and addresses of parties involved in or witnesses to the crash. A railroad train crew member must also furnish the train engineer’s and the conductor’s federally-required, railroad-issued certificates, upon the request of the law enforcement officer investigating the crash.

The fiscal impact is indeterminate but expected to be positive (a cost reduction or avoidance). See Section V. Fiscal Impact Statement.

The bill is effective on July 1, 2019.

## **II. Present Situation:**

### **Florida Uniform Traffic Control Law**

The Florida Uniform Traffic Control Law, ch. 316, F.S., is intended “to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities.”<sup>1</sup>

Section 316.003(63), F.S., defines the term “railroad train” as a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except a streetcar. For purposes of ch. 316, F.S., the term “motor vehicle” excludes a self-propelled vehicle that is operated upon rails or guideway.<sup>2</sup> Similarly, the term “vehicle” excludes a device used exclusively upon stationary rails or tracks.<sup>3</sup> Further, the term “driver” is defined as any person who drives or is in actual physical control of a vehicle on a highway or who is exercising control of a vehicle or steering a vehicle being towed by a motor vehicle.<sup>4</sup> Finally, the term “operator” is defined as any person who is in actual physical control of a motor vehicle upon the highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.<sup>5</sup>

### **Duties Related to Motor Vehicle Crashes**

Among other requirements, s. 316.027, F.S., which relates to crashes involving death or personal injury, requires the driver of a vehicle involved in a crash resulting in injury to a person other than serious bodily injury,<sup>6</sup> serious bodily injury to a person, or death of a person, to immediately stop the vehicle at the crash scene and remain there until the driver has fulfilled requirements of s. 316.062, F.S.<sup>7</sup>

Section 316.062(1), F.S., requires such driver to provide specified personal and vehicle identification information, and upon request and if available exhibit his or her license or permit to drive, to any person injured in such crash or to the driver or occupant of or person attending any vehicle or other property damaged in the crash. Such driver must also give such information and, upon request, exhibit such license or permit to any police officer at the scene of the crash or who is investigating the crash and render to any person injured in the crash reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a

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<sup>1</sup> Section 316.002, F.S.

<sup>2</sup> Section 316.003(42), F.S.

<sup>3</sup> Section 316.003(99), F.S.

<sup>4</sup> Section 316.003(20), F.S.

<sup>5</sup> Section 316.003(48), F.S.

<sup>6</sup> “Serious bodily injury” means an injury to a person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ. Section 316.027(1)(a), F.S.

<sup>7</sup> Section 316.027(2)(a)(b), and (c), F.S.



physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.<sup>8</sup>

In the event none of the persons specified are in the condition to receive the information to which they otherwise would be entitled under s. 316.062(1), F.S., and no police officer is present, the driver of any vehicle involved in such crash, after fulfilling all other requirements of ss. 316.027 and s. 316.062(1), F.S., must report the crash to the nearest office of a duly authorized police authority and submit the information specified in s. 316.062(1), F.S.<sup>9</sup>

The driver of a vehicle involved in a crash resulting only in damage to a vehicle or other property which is driven or attended by any person must also comply with the requirements of s. 316.062, F.S.<sup>10</sup>

Section 316.065(1), F.S., requires the driver of a vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle or other property in an apparent amount of at least \$500 to immediately give notice of the crash to local law enforcement.

Section 316.066(1)(a), F.S., requires a traffic crash report to be completed and submitted to the Department of Highway Safety and Motor Vehicles (DHSMV) within 10 days after an investigation is completed by the law enforcement officer investigating a motor vehicle crash if such crash:

- Resulted in the death of, personal injury to, or any indication of complaints of pain or discomfort by any of the parties or passengers involved in the crash;
- Involved a violation of s. 316.061, F.S. (failure to immediately stop a vehicle involved in a crash resulting only in damage to a vehicle or other property) or a violation of s. 316.193, F.S. (driving under the influence);
- Rendered a vehicle inoperable to a degree that required a wrecker to remove it from the scene of the crash; or
- Involved a commercial motor vehicle.

### **Crash Report Forms**

Sections 316.066(1) and 316.068(2), F.S., require law enforcement personnel to complete a report of each motor vehicle crash and provide it to the DHSMV. This report must include the following information:

- The date, time, and location of the crash;
- A description of the vehicles involved;
- The names and addresses of the parties involved;
- The names and addresses of all drivers and passengers in the vehicles involved;
- The names and addresses of witnesses;
- The name, badge number, and law enforcement agency of the officer investigating the crash; and
- The names of the insurance companies for the respective parties involved in the crash.

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<sup>8</sup> Section 316.062(1), F.S.

<sup>9</sup> Section 316.062(2), F.S.

<sup>10</sup> Section 316.061(1), F.S.

However, current law is unclear as to how to treat the passengers and crew of a railroad train when a motor vehicle crash involves a railroad train. Because the current statute can be read to include every person on the railroad train as a “passenger” or “witness” for purposes of the crash report, law enforcement may be compelled to interview every passenger and crew member on a railroad train as a potential witness, even though in many instances nothing relevant was actually witnessed.

The process of interviewing every passenger and crew member on a railroad train may keep the railroad train at the crash scene for hours, resulting in a number of potential issues, such as deteriorating passenger safety and comfort, blocked railroad crossings, and economic loss.

### **Railroad Train Accident Reports**

Florida law does not address the railroad company reporting requirements as they relate to accident reports. However, federal regulations generally require railroad companies to submit a monthly report to the Federal Railroad Authority (FRA) of all railroad accidents or incidents that are:

- Highway-rail grade crossing accidents or incidents;
- Rail equipment accidents or incidents; and
- Death, injury, and occupational illness accidents or incidents.<sup>11</sup>

In addition, each railroad company must immediately report certain types of accidents or incidents, including certain train accidents or train incidents, by calling the National Response Center.<sup>12</sup> The FRA or the National Transportation Safety Board may choose to investigate such train accidents or incidents.<sup>13</sup>

### **Certification of Locomotive Engineers and Conductors**

Federal regulations prescribe minimum federal safety standards for the eligibility, training, testing, certification, and monitoring of all locomotive engineers<sup>14</sup> and conductors.<sup>15</sup> The FRA does not test or certify engineers or conductors itself. Instead, the regulations require each railroad to adopt training and certification programs that meet the minimum requirements in the regulations,<sup>16</sup> and the FRA must approve the design of individual railroad programs.<sup>17</sup>

Ultimately, an individual who successfully completes a railroad’s FRA-approved engineer or conductor certification program receives a certificate that identifies the railroad company and person certified, and shows the qualifications, conditions, and limitations of the certification.<sup>18</sup>

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<sup>11</sup> 49 C.F.R. ss. 225.11 and 225.19.

<sup>12</sup> 49 C.F.R. s. 225.9.

<sup>13</sup> See *FRA Investigations of Railroad Accidents*, Federal Railroad Authority, available at <https://www.fra.dot.gov/Page/P0474> (last visited on March 19, 2019), and *The Investigative Process*, National Transportation Safety Board, available at <https://www.nts.gov/investigations/process/Pages/default.aspx> (last visited on March 19, 2019).

<sup>14</sup> 49 C.F.R. Part 240.

<sup>15</sup> 49 C.F.R. Part 242.

<sup>16</sup> See, e.g., 49 C.F.R. ss. 240.101 and 242.101.

<sup>17</sup> 49 C.F.R. ss. 240.103 and 242.103.

<sup>18</sup> 49 C.F.R. ss. 240.223 and 242.207.

The certificate must be signed and wallet-sized for ease of carry.<sup>19</sup> Each locomotive engineer and conductor who receives a certificate is required to have the certificate in his or her possession while on duty.<sup>20</sup>

### III. Effect of Proposed Changes:

The bill seeks to clarify the duties of law enforcement with regard to collecting required information for certain crash reports.

The bill amends s. 316.003(63), F.S., the definition of “railroad train,” to provide that a railroad train is not a motor vehicle for purposes of the Florida Uniform Traffic Control Law.

The bill also amends s. 316.068(2)(c) and (d), F.S., which, respectively, require a crash report to include the names and addresses of the parties involved in a crash and the names and addresses of all drivers and passengers in the motor vehicles involved in a crash. The bill provides that in the event of a crash covered by s. 316.027, F.S., s. 316.061, F.S., s. 316.065, F.S., or s. 316.066, F.S.,<sup>21</sup> involving a railroad train, collection of names and addresses is at the discretion of the investigating law enforcement officer.

Currently, s. 316.068(2)(g), F.S., requires a crash report contain the names of insurance companies for the “respective parties” involved in the crash, unless not available. The bill amends this requirement to specify it applies to insurance companies of the motor vehicles involved in the crash.

Section 316.068(2)(g), F.S., is also amended to provide that a railroad train crew member or a passenger on a railroad train is not a passenger for purposes of completing a crash report. However, in the event of a motor vehicle crash involving a railroad train, a railroad train crew member must furnish:

- The date, time, and location of the crash;
- A description of the vehicles involved;
- The names and addresses of the parties involved; and
- The names and addresses of witnesses.

Finally, s. 316.068(2)(g), F.S., is amended to require a railroad train crew member to furnish the train engineer’s and conductor’s federal certificates under 49 C.F.R., parts 240 and 242, upon the request of the law enforcement officer with jurisdiction to investigate the crash.

As a result of these changes, law enforcement officers may exercise discretion in their investigations of motor vehicle crashes involving a railroad train and the collection of information relevant to such crashes. This may reduce delays associated with collecting necessary information for crash reports.

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<sup>19</sup> *Id.*

<sup>20</sup> 49 C.F.R. ss. 242.209(a)(1) and 240.305(b)1.

<sup>21</sup> These statutes relate to crashes involving personal injury or death (s. 316.027, F.S.), crashes involving damage to vehicles or property (s. 316.061, F.S.), reporting to law enforcement a crash involving injury or death of any person or damage to any vehicle or property in the apparent amount of at least \$500 (s. 316.065, F.S.), and written reports of crashes (s. 316.066, F.S.)

The bill is effective on July 1, 2019.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact of the bill is indeterminate. The bill may positively impact (a cost reduction or avoidance) railroad train companies and their operations if all crew members and passengers of the train are not required to be interviewed in the event of a motor vehicle crash involving a train. However, railroad train companies may incur indeterminate expenses associated with the requirement that a railroad train crew member collect and furnish specified information. To the extent that this requirement results in delay for the railroad train crew, the expected positive fiscal impact may be offset.

C. Government Sector Impact:

The fiscal impact of the bill is indeterminate. However, the bill may reduce government expenditures relating to the investigation of railroad train accidents. Government personnel involved in these investigations will no longer be required to obtain the name and address of each person on the railroad train, unless the person is considered a witness.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 316.003 and 316.068.

**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 Infrastructure and Security on March 11, 2019:**

The committee substitute requires a member of the railroad train crew to furnish specified information relating to a crash, as well as the train engineer's and conductor's certificates issued by the railroad in accordance with federal regulations.

**B. Amendments:**

None.

By the Committee on Infrastructure and Security; and Senator  
Hutson

596-02961-19

20191002c1

A bill to be entitled

An act relating to motor vehicles and railroad trains; amending s. 316.003, F.S.; revising the definition of the term "railroad train"; amending s. 316.068, F.S.; requiring that, in the event of a crash involving a railroad train, the collection of certain information be at the discretion of the law enforcement officer having jurisdiction to investigate the crash; revising the collection of information to include the names of insurance companies of the motor vehicles involved in the crash, rather than the names of insurance companies for all respective parties; specifying that certain persons are not considered passengers for the purpose of making crash reports; requiring a member of the railroad train crew to furnish specified information; providing an effective date.

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

Section 1. Subsection (63) of section 316.003, Florida Statutes, is amended to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(63) RAILROAD TRAIN.—A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except a streetcar. A railroad train is not a motor vehicle for purposes of this chapter.

Page 1 of 3

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

596-02961-19

20191002c1

Section 2. Subsection (2) of section 316.068, Florida Statutes, is amended to read:

316.068 Crash report forms.—

(2) Every crash report required to be made in writing must be made on the appropriate form approved by the department and must contain all the information required therein, including:

(a) The date, time, and location of the crash;

(b) A description of the vehicles involved;

(c) The names and addresses of the parties involved; however, in the event of a crash involving a railroad train, including crashes covered by s. 316.027, s. 316.061, s. 316.065, or s. 316.066, the collection of the information specified in this paragraph shall be at the discretion of the law enforcement officer having jurisdiction to investigate the crash;

(d) The names and addresses of all drivers and passengers in the motor vehicles involved; however, in the event of a crash involving a railroad train, including crashes covered by s. 316.027, s. 316.061, s. 316.065, or s. 316.066, the collection of the information specified in this paragraph shall be at the discretion of the law enforcement officer having jurisdiction to investigate the crash;

(e) The names and addresses of witnesses;

(f) The name, badge number, and law enforcement agency of the officer investigating the crash; and

(g) The names of the insurance companies of the motor vehicles ~~for the respective parties~~ involved in the crash, unless not available. A member of a railroad train crew or a passenger on a railroad train is not a passenger for purposes of this section. A member of the railroad train crew shall furnish

Page 2 of 3

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

596-02961-19

20191002c1

59 the information required under paragraphs (a), (b), (c), and (e)  
60 and, upon the request of the law enforcement officer with  
61 jurisdiction to investigate the crash, the train engineer's and  
62 conductor's federal certification pursuant to 49 C.F.R., parts  
63 240 and 242. The absence of information in such written crash  
64 reports regarding the existence of passengers in the vehicles  
65 involved in the crash constitutes a rebuttable presumption that  
66 no such passengers were involved in the reported crash.  
67 Notwithstanding any other provisions of this section, a crash  
68 report produced electronically by a law enforcement officer  
69 must, at a minimum, contain the same information as is called  
70 for on those forms approved by the department.

71       Section 3. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

04.10.19

Meeting Date

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

1002

Bill Number (if applicable)

Topic MOTOR VEHICLES & RAILROAD TRAINS

Amendment Barcode (if applicable)

Name VICKI WOOLDRIDGE

Job Title DIR. OF GOV. AFFAIRS

Address 801 NW 33rd STREET

Phone 954-213-8690

Street

POMPANO BEACH FL 33064

City

State

Zip

Email wooldridgev@sfra.fl.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SO. FLA. REGIONAL TRANSPORTATION AUTHORITY / TRI-RAIL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1200

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Stargel

SUBJECT: Construction Bonds

DATE: April 12, 2019

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

| ANALYST   | STAFF DIRECTOR | REFERENCE | ACTION           |
|-----------|----------------|-----------|------------------|
| 1. Cibula | Cibula         | JU        | <b>Fav/CS</b>    |
| 2. Ryon   | Yeatman        | CA        | <b>Favorable</b> |
| 3. Cibula | Phelps         | RC        | <b>Fav/CS</b>    |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1200 defines the effect of incorrect or incomplete information in a notice of nonpayment for public and private construction contracts. This notice, as provided in existing law, is a notice that a subcontractor must serve on the contractor and the surety to preserve rights to make a claim against the contractor's payment bond.

Under the bill, the negligent inclusion or omission of information in a notice of nonpayment is not a default that would defeat an otherwise valid claim against a payment bond. However, a subcontractor who serves a fraudulent notice of nonpayment forfeits rights under the bond. A notice is fraudulent if it willfully exaggerates amounts unpaid or willfully includes claims for work not performed or materials not furnished or if it is prepared with gross negligence.

Under the bill, notices of nonpayment must be declared to be true to the best of the subcontractor's knowledge and belief.

Finally, the bill adds contractors to the list of individuals or entities who are entitled to the benefits of a one-way attorney fee statute for prevailing in litigation against a surety that issues a payment or performance bond for a construction project.

## **II. Present Situation:**

In a construction project, the owner of the property to be improved has an interest in ensuring that the contractor performs the construction work in the time and manner described in the construction contract. Contractors and subcontractors have an interest in receiving payment for their work. Mechanisms that address these interests of property owners and subcontractors are set forth in the construction lien laws in part I of chapter 713, F.S., for private construction contracts and in s. 255.05, F.S., for public construction contracts.

These mechanisms are especially important where many subcontractors who are not in privity with the owner perform work on a construction project. A subcontractor not in privity with the owner has a contract with the contractor or another subcontractor, but no direct contractual relationship with the owner. As a result, a subcontractor's identity, work, and charges for services might be unknown to the owner or contractor unless he or she complies with the notice requirements of the lien laws.

### **Payment Bonds**

Under the construction lien laws, a subcontractor may record a lien against the property improved as a means of securing payment of any amounts owed by the owner of the property. However, if the contractor provides a payment bond to secure the payment of subcontractors, the subcontractors must make claims against the bond instead of enforcing liens against the improved property.<sup>1</sup>

A payment bond is generally required for public construction contracts and is an option for private construction contracts. These bonds are conditioned on the contractor promptly paying all subcontractors including sub-subcontractors, laborers, and material suppliers who furnish labor, services, or materials under the contractor's contract.

### ***Notices of Commencement***

Payment bonds must be recorded in the official records with the clerk of court along with the Notice of Commencement for the construction project. These documents serve a purpose of informing subcontractors of the identity of the contractor responsible for the construction project and the identity of the surety that issued the payment bond.

### ***Notices to Contractor***

A Notice to Contractor serves a purpose of informing a contractor of the identity of a subcontractor who is not in privity with the contractor. Providing a Notice to Contractor is the first step that a subcontractor must take to preserve rights to make a claim against a payment bond to make its identity and work known to the contractor.

A Notice to Contractor must include a general description of the materials or services that the subcontractor has furnished or will furnish for the construction project and the subcontractor's name and address and a statement that the subcontractor intends to look to the payment bond to

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<sup>1</sup> Sections 255.05(1)(c), F.S.; s. 713.23(1)(a), F.S.

secure payment.<sup>2</sup> The notice may be served before the subcontractor begins or within 45 days after beginning to furnish labor, materials, or supplies.

### ***Notices of Nonpayment***

As a next step to preserve rights to make a claim against a payment bond, the subcontractor must serve a Notice of Nonpayment on the contractor and the surety.<sup>3</sup> With respect to public construction contracts, a subcontractor must serve the notice no earlier than 45 days after the first furnishing of labor, services, or materials.<sup>4</sup> With respect to private contracts, a subcontractor is not required to wait any period of time or wait until a payment is delinquent before serving a notice of nonpayment, but the notice must be served no later than 90 days after the final furnishing of labor, services, or materials.<sup>5</sup>

The statute relating to payment bonds for private contracts requires a subcontractor to include in a Notice of Nonpayment a description of the labor, services, and materials furnished and the amounts due and unpaid by the contractor.<sup>6</sup> However, the statute relating to payment bonds for public construction projects does not identify any specific information that must be included in a Notice of Nonpayment.

### ***Enforcing and Contesting a Claim Against a Payment Bond***

After serving the Notice of Nonpayment, a subcontractor generally must initiate a lawsuit to enforce a claim against a payment bond within 1 year after the final furnishing of labor, materials, or supplies.<sup>7</sup> However, the contractor may shorten that time period by serving the subcontractor with a Notice of Contest of Claim Against Payment Bond. Once served, the subcontractor must initiate a legal action to enforce the claim against the bond within 60 days.<sup>8</sup>

### ***Accountings Under Oath***

A contractor who has furnished a payment bond may demand that a subcontractor filing a Notice to Contractor provide a written accounting made under oath. These accountings require a subcontractor to supply more detailed information about its work and charges than it must supply in a Notice to Contractor or a Notice of Nonpayment. Specifically, this accounting must show the

nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement by the [subcontractor].<sup>9</sup>

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<sup>2</sup> Section 255.05(2)(a)2., F.S.; s. 713.23(1)(c), F.S.

<sup>3</sup> Section 255.05(2)(a)2., F.S.; s. 713.23(1)(d), F.S.

<sup>4</sup> Section 255.05(2)(a)2., F.S.

<sup>5</sup> Section 713.23(1)(d), F.S.

<sup>6</sup> Section 713.23(1)(d), F.S.

<sup>7</sup> Section 255.05(10), F.S.; s. 713.23(1)(e), F.S.

<sup>8</sup> Section 255.05(2)(a)1., F.S.; s. 713.23(1)(e), F.S.

<sup>9</sup> Section 713.16(4), F.S. Except for differences in punctuation, provisions of s. 255.05(8), F.S., which relate to bonds for public construction projects, are identical.

As a consequence of providing a false accounting or failing to timely provide the accounting, a subcontractor loses the right to make a claim against the payment bond.<sup>10</sup>

### **Effects of Errors or Omissions in Required Lien Law Notices**

The construction lien laws generally do not authorize a penalty or sanction for the negligent inclusion or omission of information in the various notices required to perfect liens which have not prejudiced the owner of an improved property or a contractor.

However, the lien laws describe a fraudulent lien as a lien in which a subcontractor willfully exaggerates the amount of the lien or in which the subcontractor willfully includes a claim for work not performed upon or materials not furnished.<sup>11</sup> A fraudulent lien also includes a lien in which “the lienor has compiled his or her claim with such willful and gross negligence as to amount to a willful exaggeration.”<sup>12</sup> A person who willfully files a fraudulent lien commits a third degree felony.<sup>13</sup> The statute defining and prohibiting fraudulent liens, however, does not appear to apply to similar fraudulent claims against a payment bond.

### **Attorney Fees in Suits Against a Surety**

Section 627.428, F.S., is a one-way attorney fee statute that requires a court to award attorney fees and costs to an insured or beneficiary who prevails in a lawsuit against an insurer. This statute applies to “owners, subcontractors, laborers, and materialmen” who are deemed to be insureds or beneficiaries in suits against a surety under a performance bond for a construction contract.<sup>14</sup> Absent from the list of individuals entitled to the benefits of the one-way attorney fee statute are contractors. A contractor, however, may have an interest in the completion or performance of a construction contract similar to that of an owner if the contractor requires a subcontractor to secure a performance bond.

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

### **Effect of Incorrect or Incomplete Notices of Nonpayment (Sections 1 & 4)**

This bill defines the effect of incorrect or incomplete information in a notice of nonpayment for public and private construction contracts. This notice, as provided in existing law, is a notice that a subcontractor must serve on the contractor and the surety to preserve rights to make a claim against the contractor’s payment bond.

Under the bill, the negligent inclusion or omission of information in a notice of nonpayment is not a default that would defeat an otherwise valid claim against a payment bond. However, the services of a fraudulent notice of nonpayment is a complete defense to a claim against the bond. A notice is fraudulent if it contains willful exaggerations of amounts unpaid or willful inclusions of claims for work not performed or materials not furnished or if it is prepared with gross

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<sup>10</sup> Section 713.16(4), F.S.; s. 255.05(8), F.S.

<sup>11</sup> Section 713.31(2)(a), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 713.31(3), F.S.

<sup>14</sup> Section 627.756(1), F.S.

negligence. The construction lien laws in chapter 713, F.S., supply a form that subcontractors not in privity with a contractor must use for a notice of nonpayment. However, s. 255.05, F.S., which authorizes notices of nonpayment as a prerequisite to claims against a payment bond for a public construction contract, does not contain a form for the notice. The bill supplies a form notice of nonpayment for public construction contracts and revises the existing form for the notices in chapter 713, F.S.

The form notices will require subcontractors to supply the information currently required about labor, services, and materials provided. However, the forms will now require subcontractors to also state the:

- Amounts “unpaid” instead of amounts “due.”
- Amounts that are for unpaid retainage.
- Labor, services, and materials that the subcontractor expects to furnish in the future for the construction project and the amounts that will become due.

Finally, the notices of nonpayment must be made under oath and contain this declaration: “I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.”<sup>15</sup>

### **Suits Against Sureties (Section 2)**

The bill provides that contractors, like owners, subcontractors, laborers, and materialmen under existing law, are entitled to the benefit of the one-way attorney fee statute, s. 627.428, F.S., if they prevail in a lawsuit against a surety under a payment or performance bond.

### **Effective Date and Application (Sections 5&6)**

The bill takes effect on October 1, 2019, and the changes relating to suits by a contractor against a surety will apply to payment or performance bonds issued after the effective date of the bill.

## **IV. Constitutional Issues:**

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

None.

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

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>15</sup> A person who is convicted of a third degree felony may be imprisoned for up to 5 years and fined up to \$5,000.

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 provision of this bill that gives contractors the benefit of a one-way attorney fee statute in litigation against a surety under a payment or performance bond will help contractors vindicate their rights, but it may encourage additional litigation and result in additional costs to sureties.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 255.05, 627.756, 627.428, and 713.23.

This bill reenacts section 627.428 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/CS by Rules on April 10, 2019:**

**The CS does not include the provisions of the underlying bill that may have required subcontractors to provide detailed information in a notice of nonpayment.**

**CS by Judiciary on March 25, 2019:**

The committee substitute differs from the underlying bill in that it:

- Replaces requirements that notices of nonpayment be verified to be true under penalty of perjury with a requirement that the notices be made under oath and declared to be true to the best of a subcontractor's knowledge and belief.
- Does not include requirements that supporting documentation be attached to a notice of nonpayment.
- Does not include provisions entitling the prevailing party to attorney fees in litigation regarding a claim against a payment bond.
- Does not include changes to the statute governing conditional payment bonds.

B. Amendments:

None.



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LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 04/10/2019 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Stargel) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 88 - 144  
and insert:  
site available for use. Any notice of nonpayment served by a  
claimant who is not in privity with the contractor which  
includes sums for retainage must specify the portion of the  
amount claimed for retainage. An action for the labor, services,  
or materials, ~~or supplies~~ may not be instituted against the  
contractor or the surety unless the notice to the contractor and  
notice of nonpayment have been served, if required by this





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section. Notices required or permitted under this section must  
~~shall~~ be served in accordance with s. 713.18. A claimant may not  
waive in advance his or her right to bring an action under the  
bond against the surety. In any action brought to enforce a  
claim against a payment bond under this section, the prevailing  
party is entitled to recover a reasonable fee for the services  
of his or her attorney for trial and appeal or for arbitration,  
in an amount to be determined by the court, which fee must be  
taxed as part of the prevailing party's costs, as allowed in  
equitable actions. The time periods for service of a notice of  
nonpayment or for bringing an action against a contractor or a  
surety shall be measured from the last day of furnishing labor,  
services, or materials by the claimant and may not be measured  
by other standards, such as the issuance of a certificate of  
occupancy or the issuance of a certificate of substantial  
completion. The negligent inclusion or omission of any  
information in the notice of nonpayment that has not prejudiced  
the contractor or surety does not constitute a default that  
operates to defeat an otherwise valid bond claim. A claimant who  
serves a fraudulent notice of nonpayment forfeits his or her  
rights under the bond. A notice of nonpayment is fraudulent if  
the claimant has willfully exaggerated the amount unpaid,  
willfully included a claim for work not performed or materials  
not furnished for the subject improvement, or prepared the  
notice with such willful and gross negligence as to amount to a  
willful exaggeration. However, a minor mistake or error in a  
notice of nonpayment, or a good faith dispute as to the amount  
unpaid, does not constitute a willful exaggeration that operates  
to defeat an otherwise valid claim against the bond. The service



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of a fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond. The notice of nonpayment under this subparagraph must supply the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To: ...(name of contractor and address)...

...(name of surety and address)...

The undersigned claimant notifies you that:

1. Claimant has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is \$ ....., of which \$ ..... is unpaid retainage.

2. Claimant has been paid to date the amount of

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

And the title is amended as follows:

Delete lines 4 - 5

and insert:

under oath; specifying that certain negligent



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LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 04/10/2019 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Stargel) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 220 - 277  
and insert:  
equipment was on the job site and available for use. A notice of nonpayment that includes sums for retainage must specify the portion of the amount claimed for retainage. The required.~~A written~~ notice satisfies this condition precedent with respect to the payment described in the notice of nonpayment, including unpaid finance charges due under the lienor's contract, and with respect to any other payments which become due to the lienor



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after the date of the notice of nonpayment. The time period for serving a ~~written~~ notice of nonpayment shall be measured from the last day of furnishing labor, services, or materials by the lienor and may ~~shall~~ not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, or materials furnished by the lienor is not considered a nonpayment requiring the service of the notice provided under this paragraph. If the payment bond is not recorded before commencement of construction, the time period for the lienor to serve a notice of nonpayment may at the option of the lienor be calculated from the date specified in this section or the date the lienor is served a copy of the bond. However, the limitation period for commencement of an action on the payment bond as established in paragraph (e) may not be expanded. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A lienor who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the lienor has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an



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otherwise valid claim against the bond. The service of a  
fraudulent notice of nonpayment is a complete defense to the  
lienor's claim against the bond. The notice under this paragraph  
must supply the following information, current as of the date of  
the notice, and must ~~may~~ be in substantially the following form:

NOTICE OF NONPAYMENT

To ...(name of contractor and address)...

...(name of surety and address)...

The undersigned lienor notifies you that:

1. The lienor ~~he or she~~ has furnished ...(describe labor,  
services, or materials)...for the improvement of the real  
property identified as ...(property description).... The  
corresponding amount now due and unpaid to date is \$...., of  
which \$ .... is unpaid retainage.

2. The lienor has been paid to date the amount

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

And the title is amended as follows:

Delete lines 22 - 23

and insert:

period of time; specifying that certain

By the Committee on Judiciary; and Senator Stargel

590-03469-19

20191200c1

1 A bill to be entitled  
 2 An act relating to construction bonds; amending s.  
 3 255.05, F.S.; requiring a notice of nonpayment to be  
 4 under oath; requiring the notice to contain certain  
 5 statements; specifying that certain negligent  
 6 inclusions or omissions do not constitute a default  
 7 that operates to default an otherwise valid bond  
 8 claim; specifying that a claimant who serves a  
 9 fraudulent notice of nonpayment forfeits his or her  
 10 rights under a bond; providing that the service of a  
 11 fraudulent notice of nonpayment is a complete defense  
 12 to the claimant's claim against the bond; requiring a  
 13 notice of nonpayment to be in a prescribed form;  
 14 amending s. 627.756, F.S.; providing that a provision  
 15 relating to attorney fees applies to certain suits  
 16 brought by contractors; deeming contractors to be  
 17 insureds or beneficiaries in relation to bonds for  
 18 construction contracts; reenacting s. 627.428, F.S.,  
 19 relating to attorney fees; amending s. 713.23, F.S.;  
 20 requiring a lienor to serve a notice of nonpayment  
 21 under oath to specified entities during a certain  
 22 period of time; requiring a notice of nonpayment to  
 23 contain certain statements; specifying that certain  
 24 negligent inclusions or omissions do not constitute a  
 25 default that operates to default an otherwise valid  
 26 bond claim; specifying that a lienor who serves a  
 27 fraudulent notice of nonpayment forfeits his or her  
 28 rights under the bond; providing that the service of a  
 29 fraudulent notice of nonpayment is a complete defense

Page 1 of 11

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

590-03469-19

20191200c1

30 to the lienor's claim against the bond; requiring a  
 31 notice of nonpayment to be in a prescribed form;  
 32 providing applicability; providing an effective date.  
 33  
 34 Be It Enacted by the Legislature of the State of Florida:  
 35  
 36 Section 1. Paragraph (a) of subsection (2) of section  
 37 255.05, Florida Statutes, is amended to read:  
 38 255.05 Bond of contractor constructing public buildings;  
 39 form; action by claimants.-  
 40 (2)(a)1. If a claimant is no longer furnishing labor,  
 41 services, or materials on a project, a contractor or the  
 42 contractor's agent or attorney may elect to shorten the time  
 43 within which an action to enforce any claim against a payment  
 44 bond must be commenced by recording in the clerk's office a  
 45 notice in substantially the following form:  
 46  
 47 NOTICE OF CONTEST OF CLAIM  
 48 AGAINST PAYMENT BOND  
 49  
 50 To: ...(Name and address of claimant)...  
 51  
 52 You are notified that the undersigned contests your notice  
 53 of nonpayment, dated ....., ....., and served on the  
 54 undersigned on ....., ....., and that the time within  
 55 which you may file suit to enforce your claim is limited to 60  
 56 days after the date of service of this notice.  
 57  
 58 DATED on ....., .....

Page 2 of 11

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

590-03469-19

20191200c1

Signed: ... (Contractor or Attorney)...

The claim of a claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice is ~~shall be~~ extinguished automatically. The contractor or the contractor's attorney shall serve a copy of the notice of contest to the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice.

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, serve ~~furnish~~ the contractor with a written notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for furnishing his or her labor, services, or materials shall serve a written notice of nonpayment on ~~deliver to~~ the contractor and on to ~~to~~ the surety ~~written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment.~~ The notice of nonpayment shall be under oath and served during the progress of the work or thereafter but may not be served earlier than 45 days after the first furnishing of labor, services, or materials by the claimant or later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, ~~not~~ later than 90 days after the date that the rental equipment was last on the job

590-03469-19

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site available for use. The notice of nonpayment must state the nature of the labor or services performed; the nature of the labor or services to be performed, if known; the materials furnished; the materials to be furnished, if known; the amount paid on account to date; the amount due; and the amount to become due, if known. All such information given must be current as of the stated date of the notice. Any notice of nonpayment served by a claimant who is not in privity with the contractor which includes sums for retainage must specify the portion of the amount claimed for retainage. An action for the labor, services, or materials, ~~or supplies~~ may not be instituted against the contractor or the surety unless the notice to the contractor and notice of nonpayment have been served, if required by this section. Notices required or permitted under this section must ~~shall~~ be served in accordance with s. 713.18. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety shall be measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The negligent inclusion or omission of

590-03469-19 20191200c1

any information in the notice of nonpayment that has not  
 prejudiced the contractor or surety does not constitute a  
 default that operates to defeat an otherwise valid bond claim. A  
 claimant who serves a fraudulent notice of nonpayment forfeits  
 his or her rights under the bond. A notice of nonpayment is  
 fraudulent if the claimant has willfully exaggerated the amount  
 due, willfully included a claim for work not performed or  
 materials not furnished for the subject improvement, or prepared  
 the notice with such willful and gross negligence as to amount  
 to a willful exaggeration. However, a minor mistake or error in  
 a notice of nonpayment, or a good faith dispute as to the amount  
 due, does not constitute a willful exaggeration that operates to  
 defeat an otherwise valid claim against the bond. The service of  
 a fraudulent notice of nonpayment is a complete defense to the  
 claimant's claim against the bond. The notice of nonpayment  
 under this subparagraph must be in substantially the following  
 form:

NOTICE OF NONPAYMENT

To: ... (name of contractor and address)...

... (name of surety and address)...

The undersigned claimant notifies you that:

1. Claimant has furnished ... (describe labor, services, or  
 materials)... for the improvement of the real property  
 identified as ... (property description).... The corresponding  
 amount now due and unpaid is \$ .....

2. Claimant has been paid on account to date the amount of  
 \$ .... for previously furnishing ... (describe labor, service, or

590-03469-19 20191200c1

materials)... for this improvement.

3. Claimant expects to furnish ... (describe labor, service,  
 or materials)... for this improvement in the future (if known),  
 and the corresponding amount expected to become due is \$ ....  
 (if known).

I declare that I have read the foregoing Notice of Nonpayment  
 and that the facts stated in it are true to the best of my  
 knowledge and belief.

DATED on ....., .....

...(signature and address of claimant)...

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was sworn to (or affirmed) and  
 subscribed before me this .... day of ...., ... (year)...., by  
 ... (name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary  
 Public)...

Personally Known .... OR Produced Identification ....

Type of Identification Produced.....

Section 2. Subsection (1) of section 627.756, Florida  
 Statutes, is amended to read:



590-03469-19

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175 627.756 Bonds for construction contracts; attorney fees in  
 176 case of suit.—  
 177 (1) Section 627.428 applies to suits brought by owners,  
 178 contractors, subcontractors, laborers, and materialmen against a  
 179 surety insurer under payment or performance bonds written by the  
 180 insurer under the laws of this state to indemnify against  
 181 pecuniary loss by breach of a building or construction contract.  
 182 Owners, contractors, subcontractors, laborers, and materialmen  
 183 shall be deemed to be insureds or beneficiaries for the purposes  
 184 of this section.  
 185 Section 3. For the purpose of incorporating the amendment  
 186 made by this act to section 627.756, Florida Statutes, in a  
 187 reference thereto, section 627.428, Florida Statutes, is  
 188 reenacted to read:  
 189 627.428 Attorney's fee.—  
 190 (1) Upon the rendition of a judgment or decree by any of  
 191 the courts of this state against an insurer and in favor of any  
 192 named or omnibus insured or the named beneficiary under a policy  
 193 or contract executed by the insurer, the trial court or, in the  
 194 event of an appeal in which the insured or beneficiary prevails,  
 195 the appellate court shall adjudge or decree against the insurer  
 196 and in favor of the insured or beneficiary a reasonable sum as  
 197 fees or compensation for the insured's or beneficiary's attorney  
 198 prosecuting the suit in which the recovery is had.  
 199 (2) As to suits based on claims arising under life  
 200 insurance policies or annuity contracts, no such attorney's fee  
 201 shall be allowed if such suit was commenced prior to expiration  
 202 of 60 days after proof of the claim was duly filed with the  
 203 insurer.

590-03469-19

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204 (3) When so awarded, compensation or fees of the attorney  
 205 shall be included in the judgment or decree rendered in the  
 206 case.  
 207 Section 4. Paragraph (d) of subsection (1) of section  
 208 713.23, Florida Statutes, is amended to read:  
 209 713.23 Payment bond.—  
 210 (1)  
 211 (d) In addition, a lienor who has not received payment for  
 212 furnishing his or her labor, services, or materials must ~~is~~  
 213 ~~required~~, as a condition precedent to recovery under the bond,  
 214 ~~to~~ serve a written notice of nonpayment to the contractor and  
 215 the surety. The notice must be under oath and served during the  
 216 progress of the work or thereafter, but may not be served ~~not~~  
 217 later than 90 days after the final furnishing of labor,  
 218 services, or materials by the lienor, or, with respect to rental  
 219 equipment, later than 90 days after the date the rental  
 220 equipment was on the job site and available for use. The notice  
 221 of nonpayment must state the nature of the labor or services  
 222 performed; the nature of the labor or services to be performed,  
 223 if known; the materials furnished; the materials to be  
 224 furnished, if known; the amount paid on account to date; the  
 225 amount due; and the amount to become due, if known. All such  
 226 information given must be current as of the stated date of the  
 227 notice. A notice of nonpayment that includes sums for retainage  
 228 must specify the portion of the amount claimed for retainage.  
 229 ~~The required. A written~~ notice satisfies this condition  
 230 precedent with respect to the payment described in the notice of  
 231 nonpayment, including unpaid finance charges due under the  
 232 lienor's contract, and with respect to any other payments which

590-03469-19

20191200c1

233 become due to the lienor after the date of the notice of  
 234 nonpayment. The time period for serving a ~~written~~ notice of  
 235 nonpayment shall be measured from the last day of furnishing  
 236 labor, services, or materials by the lienor and ~~may shall~~ not be  
 237 measured by other standards, such as the issuance of a  
 238 certificate of occupancy or the issuance of a certificate of  
 239 substantial completion. The failure of a lienor to receive  
 240 retainage sums not in excess of 10 percent of the value of  
 241 labor, services, or materials furnished by the lienor is not  
 242 considered a nonpayment requiring the service of the notice  
 243 provided under this paragraph. If the payment bond is not  
 244 recorded before commencement of construction, the time period  
 245 for the lienor to serve a notice of nonpayment may at the option  
 246 of the lienor be calculated from the date specified in this  
 247 section or the date the lienor is served a copy of the bond.  
 248 However, the limitation period for commencement of an action on  
 249 the payment bond as established in paragraph (e) may not be  
 250 expanded. The negligent inclusion or omission of any information  
 251 in the notice of nonpayment that has not prejudiced the  
 252 contractor or surety does not constitute a default that operates  
 253 to defeat an otherwise valid bond claim. A lienor who serves a  
 254 fraudulent notice of nonpayment forfeits his or her rights under  
 255 the bond. A notice of nonpayment is fraudulent if the lienor has  
 256 willfully exaggerated the amount due, willfully included a claim  
 257 for work not performed or materials not furnished for the  
 258 subject improvement, or prepared the notice with such willful  
 259 and gross negligence as to amount to a willful exaggeration.  
 260 However, a minor mistake or error in a notice of nonpayment, or  
 261 a good faith dispute as to the amount due, does not constitute a

590-03469-19

20191200c1

262 willful exaggeration that operates to defeat an otherwise valid  
 263 claim against the bond. The service of a fraudulent notice of  
 264 nonpayment is a complete defense to the lienor's claim against  
 265 the bond. The notice under this paragraph must ~~may~~ be in  
 266 substantially the following form:

## NOTICE OF NONPAYMENT

270 To ...(name of contractor and address)...

271 ...(name of surety and address)...

272 The undersigned notifies you that:

273 1. The lienor ~~he or she~~ has furnished ...(describe labor,  
 274 services, or materials)...for the improvement of the real  
 275 property identified as ...(property description).... The  
 276 corresponding amount now due and unpaid is \$....

277 2. The lienor has been paid on account to date the amount  
 278 of \$.... for previously furnishing ...(describe labor, services,  
 279 or materials)... for this improvement.

280 3. The lienor expects to furnish ...(describe labor,  
 281 service, or materials)... for this improvement in the future (if  
 282 known), and the corresponding amount expected to become due is  
 283 \$.... (if known).

284  
 285 I declare that I have read the foregoing Notice of Nonpayment  
 286 and that the facts stated in it are true to the best of my  
 287 knowledge and belief.

288  
 289 DATED on ....., .....

290

590-03469-19

20191200c1

291 ... (signature and address of lienor)...

292

293 STATE OF FLORIDA

294 COUNTY OF

295

296 The foregoing instrument was sworn to (or affirmed) and

297 subscribed before me this .... day of ...., ...(year)..., by

298 ...(name of signatory)....

299 ...(Signature of Notary Public - State of Florida)...

300 ...(Print, Type, or Stamp Commissioned Name of Notary

301 Public)...

302

303 Personally Known .... OR Produced Identification ....

304 Type of Identification Produced.....

305

306 Section 5. The amendments made by this act to s. 627.756,

307 Florida Statutes, apply only to payment or performance bonds

308 issued on or after October 1, 2019.

309 Section 6. This act shall take effect October 1, 2019.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Appropriations Subcommittee on  
Education, *Chair*  
Appropriations  
Education  
Ethics and Elections  
Finance and Tax  
Judiciary  
Rules

JOINT COMMITTEE:  
Joint Select Committee on Collective Bargaining

SENATOR KELLI STARGEL  
22nd District

April 3, 2019

The Honorable Lizbeth Benacquisto  
Senate Committee on Rules, Chair  
400 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chair Benacquisto:

I respectfully request that SB 1200, related to *Construction Bonds*, be placed on the Rules meeting agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Kelli Stargel  
State Senator, District 22

Cc: John Phelps/Staff Director  
Cynthia Futch/AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
- 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

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

BILL GALVANO  
President of the Senate

DAVID SIMMONS  
President Pro Tempore

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

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

04/10/2019

*Meeting Date*

1200

*Bill Number (if applicable)*

Topic Construction Bonds

*Amendment Barcode (if applicable)*

Name Warren Husband

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

Address PO Box 10909

Phone (850) 205-9000

*Street*

Tallahassee

FL

32302

Email \_\_\_\_\_

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fla. Associated General Contractors Council

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-10-19

Meeting Date

SB 1200

Bill Number (if applicable)

Topic

Construction Bonds

Amendment Barcode (if applicable)

Name

KARI HEBBANK

Job Title

Address

113 East College, Suite 200

Street

Tallahassee

State

Zip

Phone

514-5183

Email

Kari@wilsonagut.com

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

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

Representing

National Utility Contractors Assoc. of FL

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/CS/SB 1666

INTRODUCER: Rules Committee; Community Affairs Committee; Environment and Natural Resources Committee; and Senator Flores

SUBJECT: Vessels

DATE: April 10, 2019

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

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|----------|----------------|-----------|---------------|
| 1. | Anderson | Rogers         | EN        | <b>Fav/CS</b> |
| 2. | Toman    | Yeatman        | CA        | <b>Fav/CS</b> |
| 3. | Anderson | Phelps         | RC        | <b>Fav/CS</b> |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 1666:

- Requires a person to have either a boater safety identification card or a temporary certificate before renting and operating a vessel with a 10 horsepower or higher engine or electronic equivalent of such engine.
- Establishes criteria for obtaining a temporary certificate which is valid for 90 days.
- Provides that boating safety identification cards and temporary certificates may be issued in a digital, electronic, or paper format.
- Authorizes the Fish and Wildlife Conservation Commission (FWC) to appoint agents to administer qualifying boating safety education and temporary certificate requirements.
- Defines the term “long-term stored vessel” to mean a vessel which has remained anchored or moored without supervision or control for at least 30 days out of a 60-day period.
- Requires the FWC to conduct a study, contingent upon appropriation, on the impacts of long-term stored vessels on local communities and the state, and to present the report to the Governor and Legislature.
- Authorizes counties designated as rural areas of opportunity to create in freshwater waterbodies within their jurisdiction a “no-discharge zone” where treated and untreated sewage discharges are prohibited for specified vessels.
- Requires vessel operators within a no-discharge zone to keep sewage discharges onboard for discharge at sea or onshore at a pump-out facility.

- Imposes a civil penalty and declares the vessel or floating structure a nuisance and hazard to public safety and health if an unlawful discharge is made in a no-discharge zone.
- Requires a certain portion of vessel registration fees designated for use by the counties to be deposited into the Marine Resources Conservation Trust Fund to fund grants for derelict vessel removal. Funds not granted to local governments by a certain date in the fiscal year may be used by the FWC to remove derelict vessels.
- Prohibits a person who leaves or abandons a derelict vessel from residing or dwelling on the vessel until it is permanently removed from state waters or returned to waters in a non-derelict condition.

## II. Present Situation:

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel.<sup>1</sup> Mooring is accomplished through the utilization of moorings permanently affixed to the bottom of the water body. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.<sup>2</sup>

The anchoring of vessels has created conflicts in some areas of the state related to the use and enjoyment of the waters for many years. These issues include, but are not limited to:

- The locations where anchored vessels accumulate;
- Unattended vessels;
- Anchored vessels that are dragging anchor or not showing proper lighting;
- Vessels that are not maintained properly;
- Vessels that become derelict;
- Interpretation of state laws leading to inconsistent regulation of anchoring on state waters and confusion among the boating community; and
- Questions about local governmental authority to regulate anchoring.<sup>3</sup>

### State Regulation of the Anchoring or Mooring of Vessels

The Board of Trustees of the Internal Improvement Trust Fund (BOT) is authorized to adopt rules governing all uses of sovereignty submerged lands including rules for anchoring, mooring, or otherwise attaching to the bottom, the establishment of anchorages, the discharge of sewage, pump-out requirements, and facilities associated with anchorages.<sup>4</sup> Such rules must control the use of sovereignty submerged lands as a place of business or residence but are prohibited from

---

<sup>1</sup> Section 327.02, F.S., defines the term "vessel" to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

<sup>2</sup> Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), available at <https://www.law.ufl.edu/pdf/academics/centers-clinics/clinics/conservation/resources/anchaway.pdf> (last visited Mar. 29, 2019).

<sup>3</sup> Fish and Wildlife Conservation Commission (FWC), *Anchoring and Mooring Pilot Program Report of Findings and Recommendations*, 6 (Dec. 31, 2016), available at <http://www.boatus.com/gov/assets/pdf/fwc-2016-anchoring-and-mooring-report.pdf> (last visited Mar. 29, 2019).

<sup>4</sup> Section 253.03(7), F.S.



interfering with commerce or the transitory operation of vessels through navigable water.<sup>5</sup> The BOT has not adopted rules relating to the anchoring of vessels on the waters of the state.

State law prohibits a person from anchoring a vessel in several specific scenarios, including:

- In a manner that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel;<sup>6</sup>
- Between one-half hour after sunset and one-half hour before sunrise in certain designated anchoring limitation areas;<sup>7</sup> and
- If the nearest approach of the vessel or floating structure is within a certain distance of a marina, boat ramp, boatyard, or other vessel launching or loading facility; a superyacht repair facility; or the marked boundary of a public mooring field.<sup>8</sup>

### **Local Regulation of the Anchoring or Mooring of Vessels**

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.<sup>9</sup> Mooring fields are required to be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters which the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.<sup>10</sup>

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.<sup>11</sup> However, local governments are prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels, other than live-aboard vessels, outside the marked boundaries of permitted mooring fields.<sup>12</sup>

### **Derelict Vessels**

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.<sup>13</sup>

---

<sup>5</sup> *Id.*; see Fla. Admin. Code ch. 18-21.

<sup>6</sup> Section 327.44(2), F.S.

<sup>7</sup> Section 327.4108, F.S.

<sup>8</sup> Section 327.4109, F.S.

<sup>9</sup> Section 373.118, F.S.; Fla. Admin. Code R. 62-330.420(1).

<sup>10</sup> Fla. Admin. Code R. 62-330.420.

<sup>11</sup> Section 327.60(3), F.S., see also s. 327.02(14) and (22) for definitions of the terms “floating structure” and “live-aboard vessel.”

<sup>12</sup> Section 327.60(2)(f), F.S.

<sup>13</sup> Section 823.11(1)(b), F.S.

It is unlawful to store, leave, or abandon a derelict vessel in Florida.<sup>14</sup> A person found in violation of this law commits a first degree misdemeanor.<sup>15</sup> State law further provides that a violation of derelict vessel laws may also be subject to a civil penalty of up to \$50,000 per day.<sup>16</sup> Each day during any portion of which the violation occurs constitutes a separate offense.<sup>17</sup>

### ***Removal of Derelict Vessels***

The Division of Law Enforcement of the FWC and its officers, and the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers, have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.<sup>18</sup>

Both state and local law enforcement are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.<sup>19</sup> The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner.<sup>20</sup> A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.<sup>21</sup>

FWC may provide grants, funded from the Florida Coastal Protection Trust Fund, to local governments for the removal of derelict vessels from waters of the state, if funds are appropriated for the grant program.<sup>22</sup> Grants are awarded based on a set of criteria outlined in FWC rules.<sup>23</sup> Removal or relocation of a vessel on private property is not eligible for grant funding.<sup>24</sup>

---

<sup>14</sup> Section 823.11(2), F.S.

<sup>15</sup> A first degree misdemeanor is punishable by a term of imprisonment of no more than one year and a fine of up to \$1,000.

<sup>16</sup> Section 376.16(1), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 327.70 F.S.; *see* section 943.10(1), F.S., which defines “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

<sup>19</sup> Section 327.44(3), F.S.

<sup>20</sup> Section 327.44(5), F.S.

<sup>21</sup> Section 705.103(4), F.S.

<sup>22</sup> Section 376.15, F.S.

<sup>23</sup> Rule 68-1.003, F.A.C.

<sup>24</sup> National Oceanic and Atmospheric Association: Marine Debris Program, *Abandoned and Derelict Vessels in Florida*, available at <https://marinedebris.noaa.gov/abandoned-and-derelict-vessels/florida> (last visited Mar. 15, 2019).

***At-Risk Vessels***

In 2016, the Legislature prohibited neglected vessels or those in deteriorating conditions from anchoring, mooring, or occupying the waters of the state.<sup>25</sup> A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor; or
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, or is listing due to water intrusion, or is sunk or partially sunk.
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.<sup>26</sup>

A violation for anchoring, mooring, or occupying a vessel at risk of becoming derelict on the waters of the state is a noncriminal infraction, for which the civil penalty is \$50 for a first offense, \$100 for a second offense occurring 30 days or more after a first offense, and \$250 for a third or subsequent offense occurring 30 days or more after a previous offense.<sup>27</sup>

**Boating Safety Identification Cards**

A person born on or after January 1, 1988 who will be operating a boat in Florida waters with an engine of 10 horsepower or more, must obtain a Florida boating safety identification card.<sup>28</sup> To obtain a card, a person must complete an approved boating safety course.<sup>29</sup> There are several courses available at various price points ranging from free up to \$30.<sup>30</sup> The course must meet the 8-hour instruction requirement established by the National Association of State Boating Law Administrators and must include a component regarding diving vessels.<sup>31</sup> The card is valid for life, unless it was obtained by passing a temporary certificate examination, in which case it is valid for 12 months.<sup>32</sup>

Certain persons are exempt from the requirement to obtain a boating safety identification card. A person is exempt if he or she:

- Is licensed by the United States Coast Guard to serve as master of a vessel.
- Operates a vessel only on a private lake or pond.
- Is accompanied in the vessel by a person who is exempt from this section or who holds an identification card in compliance with this section, is 18 years of age or older, and is

<sup>25</sup> Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

<sup>26</sup> Section 327.4107, F.S.

<sup>27</sup> Section 327.73(1)(aa), F.S.

<sup>28</sup> Section 327.395(1), F.S.

<sup>29</sup> FWC, *Boater Education Identification Card*, <https://myfwc.com/boating/safety-education/id/> (last visited Mar. 29, 2019). This card is not a boating license, it is a certification that the person named on the card has successfully completed the required boating safety course.

<sup>30</sup> FWC, *Boating Safety Courses*, <https://myfwc.com/boating/safety-education/courses/> (last visited Mar. 29, 2019).

<sup>31</sup> Section 327.395(1), F.S.

<sup>32</sup> Section 327.395(5), F.S.

attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel.

- Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state which meets or exceeds the requirements in Florida.
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale.
- Is operating a vessel within 90 days after completing the boater education course and has a photographic identification card and a boater education certificate available for inspection as proof of having completed a boater education course. The boater education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination.
- Is exempted by FWC rule.<sup>33</sup>

### **Penalties for Boating Infractions**

Section 327.73, F.S., provides for non-criminal violations relating to vessel laws. An owner or operator of a vessel or floating structure who violates the law by anchoring in an anchoring limitation area or anchoring or mooring in a prohibited area is subject to a uniform boating citation and penalties.<sup>34</sup> The penalties are:

- For a first offense, up to a maximum of \$50;
- For a second offense, up to a maximum of \$100; and
- For a third offense, up to a maximum of \$250.

A person who operates a vessel without the required boating safety identification card can be charged with a noncriminal infraction and is subject to a uniform boating citation and a \$50 civil penalty.<sup>35</sup>

In addition to civil penalties, the section provides that a person who fails to appear or otherwise properly respond to a uniform boating citation will be charged with a second-degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days imprisonment.<sup>36</sup>

### **No-Discharge Zones**

A no-discharge zone is a designated body of water that prohibits the discharge of treated and untreated boat sewage.<sup>37</sup> Within the boundaries of a no-discharge zone, vessel operators are required to retain their sewage discharges onboard for discharge at sea (beyond three miles from shore) or onshore at a pump-out facility.

A state may initiate the process to establish a no-discharge zone if:

---

<sup>33</sup> Section 327.395(6), F.S.

<sup>34</sup> Section 327.73(1)(z) and (bb), F.S.

<sup>35</sup> Section 327.73(1)(s), F.S.

<sup>36</sup> Sections 775.082 and 775.083, F.S.

<sup>37</sup> U.S. Environmental Protection Agency, *Vessel Sewage Discharges: No-Discharge Zones*, <https://www.epa.gov/vessels-marinas-and-ports/vessel-sewage-discharges-no-discharge-zones-ndzs> (last visited Mar. 29, 2019).

- The state determines that the water body requires greater environmental protection than the current federal standards allow and EPA finds that adequate pump-out facilities are available;
- The EPA, upon application by the state, determines that the protection and enhancement of the water body requires establishment of a no-discharge zone; or
- The area is within a drinking water intake zone.<sup>38</sup>

Currently, Florida has three designated no-discharge zones. These are Destin Harbor, the city of Key West waters, and the state waters within the Florida Keys National Marine Sanctuary.<sup>39</sup>

### Vessel Registration Fees

A portion of the state vessel registration fees for recreational vessels are distributed to county governments.<sup>40</sup> Of the portion designated for counties, \$1 is remitted to the state for deposit into the Save the Manatee Trust Fund created within the Fish and Wildlife Conservation Commission and \$1 is remitted to the state for deposit into the Marine Resources Conservation Trust Fund to fund a grant program for public launching facilities, with priority consideration given to counties with more than 35,000 registered vessels.<sup>41</sup> The following chart shows the base registration fee and portion of the fee that is remitted to the county.

| Vessel Class <sup>42</sup> | Base Registration Fee | Portion of Fee Remitted to County |
|----------------------------|-----------------------|-----------------------------------|
| A-1                        | \$5.50                | N/A                               |
| A-2                        | \$16.25               | 2.85                              |
| 1                          | \$28.75               | 8.85                              |
| 2                          | \$78.25               | 32.85                             |
| 3                          | \$127.75              | 56.85                             |
| 4                          | \$152.75              | 68.86                             |
| 5                          | \$189.75              | 86.85                             |

### Rural Areas of Opportunity

A rural area of opportunity (RAO) is a rural community, or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.<sup>43</sup> The Governor may designate up

<sup>38</sup> *Id.*

<sup>39</sup> U.S. EPA, *No-Discharge Zones by State*, <https://www.epa.gov/vessels-marinas-and-ports/no-discharge-zones-ndzs-state#fl> (last visited Mar. 29, 2019).

<sup>40</sup> Section 328.72(1), F.S.

<sup>41</sup> Section 328.72(15), F.S. Section 206.606, F.S., establishes guidelines for the distribution and transfer of certain funds to the Marine Resources Conservation Trust Fund and also authorizes the FWC to adopt rules to administer a Florida Boating Improvement Program and provide for local public boating-related activities.

<sup>42</sup> In general, the vessel class designates various length increments of vessels which range from less than 12 feet in length (class A1) up to 110 feet or more in length (class 5).

<sup>43</sup> Section 288.0656, F.S.

to three RAOs, which establishes each region as a priority assignment for Rural and Economic Development Initiative (REDI) agencies.<sup>44</sup>

### **Undisbursed Appropriations Balances**

Section 216.301(1), F.S., provides as of June 30th of each year, for appropriations for operations only, each department and the judicial branch shall identify in the state's financial system any incurred obligation which has not been disbursed, showing in detail the commitment or to whom obligated and the amounts of such commitments or obligations. Any appropriation not identified as an incurred obligation effective June 30th shall revert to the fund from which it was appropriated and shall be available for reappropriation by the Legislature.

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

The bill requires a person to have either a boater safety identification card or a temporary certificate before renting and operating a vessel with a 10 horsepower or higher engine or electronic equivalent of such engine. Criteria for obtaining the temporary, 90-day certificate are established which replace a current 12-month temporary option. The bill also authorizes the Fish and Wildlife Conservation Commission (FWC) to appoint agents to administer qualifying boating safety education and temporary certificate requirement criteria. The agents are directed to collect the required fees associated with the credentials and are allowed to charge and keep a service fee for their efforts. Both the FWC and the agents may issue these safety credentials in digital, electronic, or paper format.

The bill defines “long-term stored vessel” to mean a vessel on the waters of the state which is not under the supervision and control of a person capable of operating, maintaining, or moving it from one location to another and which has remained anchored or moored outside of a public mooring field for at least 30 days out of a 60-day period. The definition is applicable only to the study required under the bill.

The bill requires the Fish and Wildlife Conservation Commission (FWC), contingent upon appropriation, to conduct, for no longer than two years, a study of the impacts of long-term stored vessels on local communities and the state. FWC must submit a report of its findings to the Governor and the Legislature within six months after the date the study is completed. The bill clarifies that the subsection governing the study expires January 1, 2024. The study must:

- Investigate whether, and to what extent, long-term stored vessels and vessels anchored or moored outside of public mooring fields for more than 30 days contribute to the number of derelict and abandoned vessels on the waters of the state;

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<sup>44</sup> Section 288.0656(7)(a), F.S. The Northwest Rural Area of Opportunity includes Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, Walton, and Washington Counties and portions of Walton County; the South Central Rural Area of Opportunity includes DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties and portions of Collier and Palm Beach Counties; the North Central Rural Area of Opportunity includes Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties. *See* Department of Economic Opportunity, Rural Areas of Opportunity, available at <http://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity> (last visited Mar. 29, 2019)

- Investigate the impacts of long-term stored vessels, vessels anchored or moored outside of public mooring fields for more than 30 days, and vessels anchored within public mooring fields on the local and state economies; public safety; public boat ramps, staging docks, and public marinas; and the environment during and after a significant tropical storm or hurricane event; and
- Provide recommendations for appropriate management options for long-term stored vessels and vessels anchored or moored outside of public mooring fields for more than 30 days to mitigate any identified negative impacts.

The bill authorizes a county designated as a rural area of opportunity to create a no-discharge zone for freshwater waterbodies within the county's jurisdiction. The bill prohibits treated and untreated sewage discharges within the no-discharge zone from floating structures and live-aboard vessels not capable of being used as a means of transportation and from houseboats. Vessel operators would have to retain their sewage on board for discharge at sea or onshore at a pump out facility. The bill provides that a violation in a no-discharge zone would be a noncriminal infraction, subject to a \$250 civil penalty and declaration that the vessel or floating structure a nuisance and hazard to public safety and health.

The bill authorizes grant funding from the Marine Resources Conservation Trust Fund for the removal of derelict vessels. The bill requires certain amounts to be remitted to the state from the vessel registration fees designated for use by the counties, as follows:

- Class A-2: \$0.25 for each 12-month period registered.
- Class 1: \$2.06 for each 12-month period registered.
- Class 2: \$9.26 for each 12-month period registered.
- Class 3: \$16.45 for each 12-month period registered.
- Class 4: \$20.06 for each 12-month period registered.
- Class 5: \$25.46 for each 12-month period registered.

Undisbursed balances from fees may be reapportioned to fund the Florida Boating Improvement Program or public boating access. Appropriated funds not utilized by local governments for derelict vessel removal by the end of the third quarter in a fiscal year may be used by FWC to remove derelict vessels.

The bill prohibits a person from residing or dwelling on a vessel that has been charged by an officer of FWC or any law enforcement agency as derelict until the vessel is removed from the waters of the state permanently or returned to the waters of the state in a condition that is no longer derelict.

#### **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:

Persons of any age who *rent* and operate ceratin vessels will have to obtain boater safety identification cards or temporary certificates. Costs for current safety training courses range from free up to \$30.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on state government. The FWC may experience a positive fiscal impact resulting from the issuance of boating citations. However, FWC may also experience increased costs due to increased enforcement efforts, issuing boater safety identification cards to persons who no longer fall under the grandfather provision in current law, and conducting a study on long-term stored vessels.

The bill may have a positive fiscal impact on local governments that are eligible for the derelict vessel removal grant program. A portion of county vessel registration fees will be redirected for deposit into the Marine Resources Conservation Trust Fund.

**VI. Technical Deficiencies:**

It appears that the reference to s. 206.06, F.S., (estimate of amount of fuel taxes due and unpaid) on line 320 should perhaps instead be s. 206.606, F.S., (distribution of certain proceeds) which is cross-referenced elsewhere in the bill.

**VII. Related Issues:**

None.



**VIII. Statutes Affected:**

This bill substantially amends sections 327.395, 327.4109, 327.60, 327.73, 328.72, 376.15, and 823.11 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/CS/CS by Rules on April 10, 2019:**

- Revises the study required under the bill to also include investigation of the impacts of long-term stored vessels on public boat ramps, staging docks, and public marinas.
- Makes technical and clarifying changes to language authorizing a county designated as a rural area of opportunity to create a no-discharge zone.

**CS/CS by Community Affairs on April 2, 2019:**

- Retains the exemption for persons born on or after January 1, 1988, to have a boater safety identification card before operating a vessel with a 10 horsepower or higher engine but includes vessels with electronic equivalent engines.
- Provides that a person of any age may not *rent* and operate the above motorized vessels without obtaining a boating safety identification card or temporary certificate.
- Establishes criteria for obtaining a temporary certificate which is valid for 90 days.
- Provides that safety identification cards or temporary certificates may be issued in a digital, electronic or paper format.
- Authorizes the FWC to appoint agents to administer qualifying boating safety education and temporary certificate requirements and collect related required fees. Agents are permitted to charge service fees for their efforts.
- Clarifies the types of vessels prohibited from discharging treated and untreated sewage in specified freshwater waterbodies.
- Provides that appropriated funds not utilized by local governments for derelict vessel removal as of a certain date each year may be used by FWC to remove derelict vessels.

**CS by Environment and Natural Resources Committee on March 26, 2019:**

- Deletes the exemption for persons born on or after January 1, 1988, to have a boater safety identification card before operating a vessel with a 10 horsepower or higher engine.
- Defines the term “long-term stored vessel” to mean a vessel which has remained anchored or moored without supervision or control for at least 30 days out of a 60-day period.
- Requires FWC to conduct a study, contingent upon appropriation, on the impacts of long-term stored vessels on local communities and the state, and to present the report to the Governor and Legislature.
- Authorizes counties designated as rural areas of opportunity to create in freshwater waterbodies within their jurisdiction a “no-discharge zone” where treated and untreated sewage discharges are prohibited.

- Requires vessel operators within a no-discharge zone to keep sewage discharges onboard for discharge at sea or onshore at a pump-out facility.
- Imposes a civil penalty and declares the vessel or floating structure a nuisance and hazard to public safety and health if an unlawful discharge is made in a no-discharge zone.
- Requires a certain portion of vessel registration fees designated for use by the counties to be deposited into the Marine Resources Conservation Trust Fund to fund grants for derelict vessel removal.
- Prohibits a person who leaves or abandons a derelict vessel from residing or dwelling on the vessel until it is permanently removed from state waters or returned to waters in a non-derelict condition.

B. Amendments:

None.



416476

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 04/10/2019 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Flores) recommended the following:

**Senate Amendment**

Delete lines 177 - 209  
and insert:  
fields on the local and state economies; public safety; public  
boat ramps, staging docks, and public marinas; and the  
environment during and after significant tropical storm and  
hurricane events.

3. Provide recommendations for appropriate management  
options for long-term stored vessels and vessels anchored or  
moored outside public mooring fields for more than 30 days to



416476

mitigate any identified negative impacts to local communities  
and this state.

(d) The commission shall submit a report of its findings  
and recommendations to the Governor, the President of the  
Senate, and the Speaker of the House of Representatives within 6  
months after the study is completed.

(e) This subsection is contingent upon appropriation by the  
Legislature.

(f) This subsection expires January 1, 2024.

Section 3. Present paragraphs (c) and (d) of subsection (4)  
of section 327.60, Florida Statutes, are redesignated as  
paragraphs (d) and (e), respectively, and a new paragraph (c) is  
added to that subsection, to read:

327.60 Local regulations; limitations.—

(4)

(c) A county designated as a rural area of opportunity may  
create a no-discharge zone for freshwater waterbodies within the  
county's jurisdiction to prohibit treated and untreated sewage  
discharges from floating structures and live-aboard vessels not  
capable of being used as a means of transportation and from  
houseboats. Within no-discharge zone boundaries, operators of  
such floating structures, live-aboard vessels, and houseboats  
shall retain their sewage on board for discharge at a pumpout  
facility or for discharge more than 3 miles off the coast in the  
Atlantic Ocean or more than 9 miles off the coast in the Gulf of  
Mexico. Violations of this paragraph are punishable as provided  
in s. 327.53(6) and (7).

By the Committees on Community Affairs; and Environment and Natural Resources; and Senator Flores

578-03798-19

20191666c2

1 A bill to be entitled  
 2 An act relating to vessels; amending s. 327.395, F.S.;  
 3 revising boating safety identification requirements  
 4 for certain persons; requiring any person who rents  
 5 and operates certain vessels to have certain  
 6 photographic and safety identification in his or her  
 7 possession before operating the vessel; authorizing  
 8 the commission to appoint certain persons to issue  
 9 temporary certificates; authorizing the commission to  
 10 issue boating safety identification cards tor  
 11 temporary certificates in digital or electronic  
 12 formats; authorizing the commission to appoint agents  
 13 to administer and charge fees for the boating safety  
 14 education course or temporary certificate examination;  
 15 amending s. 327.4109, F.S.; defining a term; directing  
 16 the Fish and Wildlife Conservation Commission to  
 17 conduct, contingent upon appropriation, a specified  
 18 study of the impacts of long-term stored vessels and  
 19 certain anchored and moored vessels on local  
 20 communities and the state and to submit a report to  
 21 the Governor and Legislature within a specified  
 22 timeframe; providing for expiration of the study  
 23 requirements; amending s. 327.60, F.S.; authorizing  
 24 certain counties to create no-discharge zones;  
 25 providing requirements for discharge in specified  
 26 areas outside the no-discharge zones; reenacting and  
 27 amending s. 327.73, F.S., relating to noncriminal  
 28 infractions; specifying the fines for violations  
 29 related to no-discharge zones; amending s. 328.72,

Page 1 of 13

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

578-03798-19

20191666c2

30 F.S.; revising the distribution of vessel registration  
 31 fees to provide grants for derelict vessel removal;  
 32 amending s. 376.15, F.S.; authorizing the commission  
 33 to use certain funds to remove, or to pay private  
 34 contractors to remove, derelict vessels; amending s.  
 35 823.11, F.S.; prohibiting persons from residing or  
 36 dwelling on certain derelict vessels until certain  
 37 conditions are met; providing an effective date.  
 38  
 39 Be It Enacted by the Legislature of the State of Florida:  
 40  
 41 Section 1. Section 327.395, Florida Statutes, is amended to  
 42 read:  
 43 327.395 Boating safety education identification cards.—  
 44 (1) A person born on or after January 1, 1988, may not  
 45 operate a vessel powered by a motor of 10 horsepower or greater,  
 46 including the electric equivalent of 10 horsepower or greater,  
 47 and a person of any age may not rent and operate such a vessel,  
 48 unless such person has in his or her possession aboard the  
 49 vessel photographic identification and a boating boater safety  
 50 identification card issued by the commission, ~~or~~ a state-issued  
 51 identification card or driver license indicating possession of  
 52 the boating boater safety identification card, or photographic  
 53 identification and a temporary certificate issued or approved by  
 54 the commission, which shows that he or she has:  
 55 (a) Completed a commission-approved boating safety boater  
 56 education course that meets the minimum requirements 8-hour  
 57 ~~instruction requirement~~ established by the National Association  
 58 of State Boating Law Administrators; or

Page 2 of 13

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578-03798-19

20191666c2

(b) ~~Passed a course equivalency examination approved by the commission, or~~

~~(c)~~ Passed a temporary certificate examination developed or approved by the commission.

(2) (a) ~~A~~ Any person may obtain a boating boater safety identification card by successfully completing a boating safety education course that meets ~~complying with~~ the requirements of this section and rules adopted by the commission pursuant to this section.

(b) A person may obtain a temporary certificate by passing a temporary certificate examination that meets the requirements of this section and rules adopted by the commission pursuant to this section.

(3) Any commission-approved boating boater ~~education or boater safety education course, course equivalency examination developed or approved by the commission,~~ or temporary certificate examination developed or approved by the commission must include a component regarding diving vessels, awareness of divers in the water, divers-down warning devices, and the requirements of s. 327.331.

(4) The commission may appoint liveries, marinas, or other persons as its agents to administer the course, ~~course equivalency examination,~~ or temporary certificate examination and issue identification cards or temporary certificates in digital, electronic, or paper format under guidelines established by the commission. An agent must charge the \$2 examination fee, which must be forwarded to the commission with proof of passage of the examination and may charge and keep a \$1 service fee.

578-03798-19

20191666c2

(5) A boating safety ~~An~~ identification card issued to a person who has completed a boating safety education course ~~or a course equivalency examination~~ is valid for life. A temporary certificate ~~card~~ issued to a person who has passed a temporary certification examination is valid for 90 days after 12 months ~~from~~ the date of issuance. The commission may issue either the boating safety identification card or the temporary certificate in a digital, electronic, or paper format.

(6) A person is exempt from subsection (1) if he or she:

(a) Is licensed by the United States Coast Guard to serve as master of a vessel.

(b) Operates a vessel only on a private lake or pond.

(c) Is accompanied in the vessel by a person who is exempt from this section or who holds a boating safety ~~an~~ identification card in compliance with this section, who is 18 years of age or older, and who is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel.

(d) Is a nonresident who has in his or her possession photographic identification and proof that he or she has completed a boating safety boater education course or equivalency examination in another state or a United States territory which meets or exceeds the minimum requirements established by the National Association of State Boating Law Administrators of subsection (1).

(e) Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale meeting the requirements of s. 328.46(1).

578-03798-19

20191666c2

(f) Is operating a vessel within 90 days after completing the requirements of paragraph (1)(a) ~~or paragraph (1)(b)~~ and has a photographic identification card and a boating safety boater education certificate available for inspection as proof of having completed a boating safety boater education course. The boating safety boater education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination.

(g) Is exempted by rule of the commission.

(7) A person who operates a vessel in violation of subsection (1) commits a noncriminal infraction, punishable as provided in s. 327.73.

~~(8) The commission shall design forms and adopt rules to administer this section. Such rules shall include provision for educational and other public and private entities to offer the course and administer examinations.~~

(8)(9) The commission shall institute and coordinate a statewide program of boating safety instruction and certification to ensure that boating safety courses and examinations are available in each county of the state. The commission may appoint agents to administer the boating safety education course or temporary certificate examination and may authorize the agents to issue temporary certificates in digital, electronic, or paper format. The agents shall charge and collect the \$2 fee required in subsection (9) for each temporary certificate, which must be forwarded to the commission. The agent may charge and keep a \$1 service fee.

(9)(10) The commission is authorized to establish and to

578-03798-19

20191666c2

collect a \$2 ~~examination fee for each card and certificate issued pursuant to this section to cover administrative costs.~~

~~(10)(11) The commission shall design forms and is authorized to adopt rules pursuant to chapter 120 to implement the provisions of this section.~~

~~(11)(12) This section may be cited as the "Osmany 'Ozzie' Castellanos Boating Safety Education Act."~~

Section 2. Subsection (6) is added to section 327.4109, Florida Statutes, to read:

327.4109 Anchoring or mooring prohibited; exceptions; penalties.—

(6)(a) As used in this subsection, and applied only for the purposes of the study required by this subsection and not for any other purposes, the term "long-term stored vessel" means a vessel on the waters of the state which is not under the supervision and control of a person capable of operating, maintaining, or moving it from one location to another and which has remained anchored or moored outside of a public mooring field for at least 30 days out of a 60-day period.

(b) The commission shall conduct, or contract with a private vendor to conduct, for not longer than 2 years, a study of the impacts of long-term stored vessels on local communities and this state.

(c) The study shall:

1. Investigate whether, and to what extent, long-term stored vessels and vessels anchored or moored outside of public mooring fields for more than 30 days contribute to the number of derelict and abandoned vessels on the waters of the state.

2. Investigate the impacts of long-term stored vessels,

578-03798-19 20191666c2

175 vessels anchored or moored outside of public mooring fields for  
 176 more than 30 days, and vessels moored within public mooring  
 177 fields on the local and state economies, public safety, and the  
 178 environment during and after significant tropical storm and  
 179 hurricane events.

180 3. Provide recommendations for appropriate management  
 181 options for long-term stored vessels and vessels anchored or  
 182 moored outside public mooring fields for more than 30 days to  
 183 mitigate any identified negative impacts to local communities  
 184 and this state.

185 (d) The commission shall submit a report of its findings  
 186 and recommendations to the Governor, the President of the  
 187 Senate, and the Speaker of the House of Representatives within 6  
 188 months after the study is completed.

189 (e) This subsection is contingent upon appropriation by the  
 190 Legislature.

191 (f) This subsection expires January 1, 2024.

192 Section 3. Present paragraphs (c) and (d) of subsection (4)  
 193 of section 327.60, Florida Statutes, are redesignated as  
 194 paragraphs (d) and (e), respectively, and a new paragraph (c) is  
 195 added to that subsection, to read:

196 327.60 Local regulations; limitations.—

197 (4)

198 (c) A county designated as a rural area of opportunity may  
 199 create a no-discharge zone for freshwater waterbodies within the  
 200 county's jurisdiction to prohibit treated and untreated sewage  
 201 discharges from floating structures not capable of being used as  
 202 a means of transportation, live-aboard vessels, and houseboats.  
 203 Within no-discharge zone boundaries, operators of such floating

578-03798-19 20191666c2

204 structures, live-aboard vessels, and houseboats shall retain  
 205 their sewage on shore for discharge at a pumpout facility or on  
 206 board for discharge more than 3 miles off the coast in the  
 207 Atlantic Ocean or more than 10 miles off the coast in the Gulf  
 208 of Mexico. Violations of this paragraph are punishable as  
 209 provided in s. 327.53(6) and (7).

210 Section 4. Paragraph (r) of subsection (1) of section  
 211 327.73, Florida Statutes, is amended, and paragraph (s) of that  
 212 subsection and subsection (4) of that section are reenacted, to  
 213 read:

214 327.73 Noncriminal infractions.—

215 (1) Violations of the following provisions of the vessel  
 216 laws of this state are noncriminal infractions:

217 (r) Section 327.53(4), (5), and (7), relating to marine  
 218 sanitation, and section 327.60, relating to no-discharge zones,  
 219 for which the civil penalty is \$250.

220 (s) Section 327.395, relating to boater safety education.

221 Any person cited for a violation of any provision of this  
 222 subsection shall be deemed to be charged with a noncriminal  
 223 infraction, shall be cited for such an infraction, and shall be  
 224 cited to appear before the county court. The civil penalty for  
 225 any such infraction is \$50, except as otherwise provided in this  
 226 section. Any person who fails to appear or otherwise properly  
 227 respond to a uniform boating citation shall, in addition to the  
 228 charge relating to the violation of the boating laws of this  
 229 state, be charged with the offense of failing to respond to such  
 230 citation and, upon conviction, be guilty of a misdemeanor of the  
 231 second degree, punishable as provided in s. 775.082 or s.  
 232



578-03798-19

20191666c2

775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

(4) Any person charged with a noncriminal infraction under this section may:

(a) Pay the civil penalty, either by mail or in person, within 30 days of the date of receiving the citation; or,

(b) If he or she has posted bond, forfeit bond by not appearing at the designated time and location.

If the person cited follows either of the above procedures, he or she shall be deemed to have admitted the noncriminal infraction and to have waived the right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings. If a person who is cited for a violation of s. 327.395 can show a boating safety identification card issued to that person and valid at the time of the citation, the clerk of the court may dismiss the case and may assess a dismissal fee of up to \$10. If a person who is cited for a violation of s. 328.72(13) can show proof of having a registration for that vessel which was valid at the time of the citation, the clerk may dismiss the case and may assess the dismissal fee.

Section 5. Subsection (15) of section 328.72, Florida Statutes, is amended to read:

328.72 Classification; registration; fees and charges; surcharge; disposition of fees; fines; marine turtle stickers.-

(15) DISTRIBUTION OF FEES.-Except as provided in this subsection ~~for the first \$2, \$1 of which shall be remitted to the state for deposit into the Save the Manatee Trust Fund~~

578-03798-19

20191666c2

~~created within the Fish and Wildlife Conservation Commission and \$1 of which shall be remitted to the state for deposit into the Marine Resources Conservation Trust Fund to fund a grant program for public launching facilities pursuant to s. 206.606, giving priority consideration to counties with more than 35,000 registered vessels,~~ moneys designated for the use of the counties, as specified in subsection (1), shall be distributed by the tax collector to the board of county commissioners for use only as provided in this section. Such moneys to be returned to the counties are for the sole purposes of providing, maintaining, or operating recreational channel marking and other uniform waterway markers, public boat ramps, lifts, and hoists, marine railways, boat piers, docks, mooring buoys, and other public launching facilities; and removing derelict vessels, debris that specifically impede boat access, not including the dredging of channels, and vessels and floating structures deemed a hazard to public safety and health for failure to comply with s. 327.53. Counties shall demonstrate through an annual detailed accounting report of vessel registration revenues that the registration fees were spent as provided in this subsection. This report shall be provided to the Fish and Wildlife Conservation Commission no later than November 1 of each year. If, before January 1 of each calendar year, the accounting report meeting the prescribed criteria has still not been provided to the commission, the tax collector of that county may not distribute the moneys designated for the use of counties, as specified in subsection (1), to the board of county commissioners but shall, for the next calendar year, remit such moneys to the state for deposit into the Marine Resources

578-03798-19

20191666c2

Conservation Trust Fund. The commission shall return those moneys to the county if the county fully complies with this section within that calendar year. If the county does not fully comply with this section within that calendar year, the moneys shall remain within the Marine Resources Trust Fund and may be appropriated for the purposes specified in this subsection.

(a) From the vessel registration fees designated for use by the counties in subsection (1), \$1 shall be remitted to the state for deposit into the Save the Manatee Trust Fund.

(b) From the vessel registration fees designated for use by the counties in subsection (1), \$1 shall be remitted to the state for deposit into the Marine Resources Conservation Trust Fund to fund a grant program for public launching facilities pursuant to s. 206.606, giving priority consideration to counties with more than 35,000 registered vessels.

(c) From the vessel registration fees designated for use by the counties in subsection (1), the following amounts shall be remitted to the state for deposit into the Marine Resources Conservation Trust Fund to fund derelict vessel removal grants, as appropriated by the legislature pursuant to s. 376.15:

1. Class A-2: \$0.25 for each 12-month period registered.

2. Class 1: \$2.06 for each 12-month period registered.

3. Class 2: \$9.26 for each 12-month period registered.

4. Class 3: \$16.45 for each 12-month period registered.

5. Class 4: \$20.06 for each 12-month period registered.

6. Class 5: \$25.46 for each 12-month period registered.

(d) Any undisbursed balances identified pursuant to s. 216.301, shall be available for reappropriation to fund the Florida Boating Improvement Program or public boating access in

578-03798-19

20191666c2

accordance with s. 206.06.

Section 6. Paragraph (d) of subsection (3) of section 376.15, Florida Statutes, is amended to read:

376.15 Derelict vessels; relocation or removal from public waters.—

(3)

(d) The commission may establish a program to provide grants to local governments for the removal of derelict vessels from the public waters of the state. The program shall be funded from the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund. Notwithstanding the provisions in s. 216.181(11), funds available for grants may only be authorized by appropriations acts of the Legislature. In a given fiscal year, if all funds appropriated pursuant to this paragraph are not requested by and granted to local governments for the removal of derelict vessels by the end of the third quarter, the Fish and Wildlife Conservation Commission may use the remainder of the funds to remove, or to pay private contractors to remove, derelict vessels.

Section 7. Subsection (6) is added to section 823.11, Florida Statutes, to read:

823.11 Derelict vessels; relocation or removal; penalty.—

(6) If an owner or a responsible party of a vessel determined to be derelict through an administrative or criminal proceeding has been charged by an officer of the commission or any law enforcement agency or officer as specified in s. 327.70 under subsection (5) for a violation of subsection (2) or a violation of s. 376.15(2), a person may not reside or dwell on such vessel until the vessel is removed from the waters of the

578-03798-19

20191666c2

349 state permanently or returned to the waters of the state in a  
350 condition that is no longer derelict.

351 Section 8. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/19  
Meeting Date

1666  
Bill Number (if applicable)  
416 476  
Amendment Barcode (if applicable)

Topic Vessels

Name Edgar Fernandez

Job Title Partner

Address 201 W Park Avenue

Street

Tallahassee

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Zip

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Email Edgar.Fernandez@thelocal.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Palm Beach

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/10/19

Meeting Date

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

1666

Bill Number (if applicable)

Topic Vessels

Amendment Barcode (if applicable)

Name Bonnie Basham

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

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing BOAT U.S.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/19  
Meeting Date

1666  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name JERRY PAUL

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

Address \_\_\_\_\_  
Street

Phone 850-386-5267

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

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

Representing AMERICAN CRUISING ASSOCIATION (AGLCA)

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7048

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: Disclosure of Confidential Records

DATE: April 9, 2019

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

|    | ANALYST      | STAFF DIRECTOR | REFERENCE | ACTION                                |
|----|--------------|----------------|-----------|---------------------------------------|
|    | <u>Delia</u> | <u>Hendon</u>  |           | <b>CF Submitted as Committee Bill</b> |
| 1. | <u>Price</u> | <u>Miller</u>  | <u>IS</u> | <b>Favorable</b>                      |
| 2. | <u>Delia</u> | <u>Phelps</u>  | <u>RC</u> | <b>Favorable</b>                      |

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## **I. Summary:**

SB 7048 requires that when a patient communicates a specific threat against an identifiable individual to a mental health service provider, the provider must release information from the clinical record of the patient sufficient to inform the threatened individual. The provider must also inform law enforcement of the threat.

The bill provides immunity from civil or criminal liability to the administrator of a mental health facility, psychiatrists, psychologists, social workers, and other treatment providers who disclose information conveyed to them by a patient communicating a threat to a specific, readily identifiable third party.

The fiscal impact on the state is indeterminate, and the bill has an effective date of July 1, 2019.

## **II. Present Situation:**

### **Clinical Records and Confidentiality**

Clinical records maintained by mental health facilities in Florida “include[] all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by facility staff which pertains to the patient’s hospitalization or treatment<sup>1</sup>.” Clinical records are confidential and exempt by statute.<sup>2</sup> Instances in which clinical records must be disclosed to certain individuals include:

- Authorization from patient or guardian.
- Authorization from patient’s attorney needed “for adequate representation.”
- Court order.

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<sup>1</sup> Section 394.4615, F.S.

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

- The Department of Corrections, if the patient is committed to, or is to be returned to, the Department of Corrections from the Department of Children and Families.<sup>3</sup>

### **Therapist-Client Privilege**

In 1996, the U.S. Supreme Court established a federal psychotherapist-patient privilege protecting a patient's confidential communication with a psychotherapist in the course of treatment or diagnosis.<sup>4</sup> The privilege protects a patient's confidential communication from compelled disclosure.<sup>5</sup> The majority of states have laws that either permit or require mental health professionals to disclose otherwise confidential information received from patients who the professional reasonably believes may become violent.<sup>6</sup>

### ***Tarasoff and the Duty to Protect***

In *Tarasoff v. Regents of the University of California*,<sup>7</sup> a University of California (UC) Berkeley student, Prosenjit Poddar, told his therapist of his plan to purchase a gun and murder another student, Tatiana Tarasoff.<sup>8</sup> The therapist informed the campus police of the threat but neither the police nor the therapist warned Tarasoff directly.<sup>9</sup> Poddar proceeded to carry out his plan and murder Tarasoff roughly two months later. Tarasoff's parents sued the UC Regents and the Supreme Court of California ultimately developed what is now known as a *Tarasoff* duty: "The general formulation is that a mental health worker is obligated promptly to notify either the potential victim or the police when a patient makes an explicit threat of serious physical harm against a readily identifiable third party . . . ."<sup>10</sup>

The *Tarasoff* duty has expanded into many different forms and requirements among the different states.<sup>11</sup> There is no blanket federal duty to warn or protect; instead, there is substantial state-by-state variation in whether and how the duties are defined and codified. There are three general categories of states: those that mandate some duty to warn or protect (and that often specify whether law enforcement, the victim, or a combination should be "warned," generally considered 'mandatory' states); those that allow therapists to warn by protecting them from liability for breach of confidentiality if they do so, but do not require them to issue a warning (permissive states); and those that offer no statutory or case law guidance.<sup>12</sup>

### **Duties of Mental Health Professionals in Florida**

Florida is considered a 'permissive' duty to warn/protect state: mental health providers are given discretion to breach confidentiality with patients and warn of a threat to a third party where a

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<sup>3</sup> Section 394.4615(2), F.S.

<sup>4</sup> See *Jaffee v. Redmond*, 518 U.S. 1 (1996).

<sup>5</sup> *Id.*

<sup>6</sup> Edwards, Griffin Sims, Database of State Tarasoff Laws (February 11, 2010), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1551505](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1551505) (last visited February 16, 2019).

<sup>7</sup> 551 P.2d 334 (Cal. 1976).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Paul B. Herbert & Kathryn A. Young, *Tarasoff at Twenty-Five*, 30 J. Am. Acad. Psychiatry L. 275, 277 (2002).

<sup>11</sup> *supra* at Note 6.

<sup>12</sup> *Id.*



patient has “declared an intention to harm other persons.”<sup>13</sup> The Legislature first added a dangerous patient exception to the confidentiality requirement for psychiatrists,<sup>14</sup> and later for psychologists<sup>15</sup> and for social workers and other mental health professionals.<sup>16</sup> Communications between a licensed or certified mental health worker and the patient or client are confidential, and may be waived, only when “there is a clear and immediate probability of physical harm to the patient or client, to other individuals, or to society...” and the licensed professional communicates the information “only to the potential victim, appropriate family member, or ...other appropriate authorities.”<sup>17</sup>

### III. Effect of Proposed Changes:

**Section 1** amends section 394.4615, F.S., requiring the release of confidential information from a patient’s clinical record sufficient to inform a third party of a specific threat to cause serious bodily injury or death to the individual. The threat must be communicated to both law enforcement and the threatened individual by the administrator of a mental health treatment facility or hospital once the patient has made the threat to a service provider at the facility or hospital.

**Section 2** amends section 456.059, F.S., requiring a psychiatrist to disclose patient communications to the extent necessary to warn law enforcement and a potential victim of a threat of serious bodily injury or death made by the patient of the threat. The bill provides that such disclosure of confidential communications may not be the basis of legal action or any civil or criminal liability against the psychiatrist.

**Section 3** amends section 490.0147, F.S., requiring a psychologist to disclose patient communications to the extent necessary to warn law enforcement and a potential victim of a threat of serious bodily injury or death made by the patient of the threat. The bill provides that such disclosure of confidential communications may not be the basis of legal action or any civil or criminal liability against the psychologist.

**Section 4** amends section 491.0147, F.S., requiring a health care professional licensed under Chapter 491, Florida Statutes, to disclose patient communications to the extent necessary to warn law enforcement and a potential victim of a threat of serious bodily injury or death made by the patient of the threat. The bill provides that such disclosure of confidential communications may not be the basis of legal action or any civil or criminal liability against the health care professional.

**Section 5** reenacts paragraph (u) of section 490.009(1), F.S., for the purpose of incorporating changes made by the bill to s. 490.0147, F.S.

**Section 6** reenacts paragraph (u) of section 491.009(1), F.S., for the purpose of incorporating changes made by the bill to s. 491.0147, F.S.

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<sup>13</sup> Section 394.4615, F.S.

<sup>14</sup> Section 456.059, F.S.

<sup>15</sup> Section 490.0147, F.S.

<sup>16</sup> Section 491.0147, F.S.

<sup>17</sup> *Id.*

**Section 7** provides an effective date of July 1, 2019.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Local law enforcement offices may need additional training and/or to add personnel to handle what may be an increased threat response from mandatory reporting. However, the impact of these potential needs cannot be determined.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 394.4615, 456.059, 490.0147, and 491.0147.

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

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

None.

**B. Amendments:**

None.

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

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By the Committee on Children, Families, and Elder Affairs

586-02489-19

20197048\_\_

A bill to be entitled

An act relating to disclosure of confidential records; amending s. 394.4615, F.S.; requiring service providers to disclose information from a clinical record under certain circumstances relating to threats to cause seriously bodily injury or death; amending s. 456.059, F.S.; requiring, rather than authorizing, psychiatrists to disclose certain patient communications for purposes of notifying potential victims and law enforcement agencies of certain threats; amending s. 490.0147, F.S.; requiring, rather than authorizing, psychologists to disclose certain patient and client communications for purposes of notifying potential victims and law enforcement agencies of certain threats; providing psychologists with immunity from specified liability and actions under certain circumstances; amending s. 491.0147, F.S.; requiring, rather than authorizing, certain license holders and certificate holders to disclose certain patient and client communications for purposes of notifying potential victims and law enforcement agencies of certain threats; providing such persons with immunity from specified liability and actions; reenacting s. 490.009, F.S., relating to discipline of psychiatrists; reenacting s. 491.009, F.S., relating to discipline of psychologists; providing an effective date.

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

Page 1 of 7

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

586-02489-19

20197048\_\_

Section 1. Present subsections (4) through (11) of section 394.4615, Florida Statutes, are redesignated as subsections (5) through (12), respectively, a new subsection (4) is added to that section, and subsection (3) of that section is amended, to read:

394.4615 Clinical records; confidentiality.-

(3) Information from the clinical record must ~~may~~ be released ~~in the following circumstances:~~

~~(a)~~ when a patient has communicated to a service provider a specific threat to cause serious bodily injury or death to an identified or a readily available person, if the service provider reasonably believes, or should reasonably believe according to the standards of his or her profession, that the client has the apparent intent and ability to imminently or immediately carry out such threat ~~declared an intention to harm other persons~~. When such communication declaration has been made, the administrator must ~~may~~ authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the patient and communicate the threat to law enforcement.

(4) (a) (b) Information from the clinical record may be released when the administrator of the facility or secretary of the department deems release to a qualified researcher as defined in administrative rule, an aftercare treatment provider, or an employee or agent of the department is necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, aftercare planning, or evaluation of programs.

Page 2 of 7

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

586-02489-19

20197048\_\_

(b) For the purpose of determining whether a person meets the criteria for involuntary outpatient placement or for preparing the proposed treatment plan pursuant to s. 394.4655, the clinical record may be released to the state attorney, the public defender or the patient's private legal counsel, the court, and to the appropriate mental health professionals, including the service provider identified in s.

394.4655(7)(b)2., in accordance with state and federal law.

Section 2. Section 456.059, Florida Statutes, is amended to read:

456.059 Communications confidential; exceptions.—

Communications between a patient and a psychiatrist, as defined in s. 394.455, shall be held confidential and ~~may~~ shall not be disclosed except upon the request of the patient or the patient's legal representative. Provision of psychiatric records and reports are ~~shall be~~ governed by s. 456.057. Notwithstanding any other provision of this section or s. 90.503, when ~~where~~:

(1) A patient is engaged in a treatment relationship with a psychiatrist;

(2) Such patient has communicated to the psychiatrist a specific threat to cause serious bodily injury or death to an identified or a readily available person ~~made an actual threat to physically harm an identifiable victim or victims~~; and

(3) The treating psychiatrist makes a clinical judgment that the patient has the apparent intent and ability to imminently or immediately carry out such threat ~~capability to commit such an act and that it is more likely than not that in the near future the patient will carry out that threat~~,

586-02489-19

20197048\_\_

the psychiatrist shall ~~may~~ disclose patient communications to the extent necessary to warn any potential victim or to communicate the threat to a law enforcement agency. A psychiatrist's disclosure of confidential communications when communicating a threat pursuant to this section may not be the basis of any legal action or criminal or civil liability against the psychiatrist ~~No civil or criminal action shall be instituted, and there shall be no liability on account of disclosure of otherwise confidential communications by a psychiatrist in disclosing a threat pursuant to this section.~~

Section 3. Section 490.0147, Florida Statutes, is amended to read:

490.0147 Confidentiality and privileged communications.—

(1) Any communication between a psychologist ~~any person licensed under this chapter~~ and her or his patient or client is ~~shall be~~ confidential. This privilege may be waived under the following conditions:

(a) ~~(1)~~ When the psychologist ~~person licensed under this chapter~~ is a party defendant to a civil, criminal, or disciplinary action arising from a complaint filed by the patient or client, in which case the waiver shall be limited to that action; ~~or~~—

(b) ~~(2)~~ When the patient or client agrees to the waiver, in writing, or when more than one person in a family is receiving therapy, when each family member agrees to the waiver, in writing.

(2) Such privilege must be waived, and the psychologist shall disclose patient and client communications to the extent necessary to warn any potential victim and to communicate the

586-02489-19

20197048

threat to a law enforcement agency, if a patient or client has communicated to the psychologist a specific threat to cause serious bodily injury or death to an identified or readily available person, and the psychologist makes a clinical judgment that the patient or client has the apparent intent and ability to imminently or immediately carry out such threat. A psychologist's disclosure of confidential communications when communicating a threat pursuant to this subsection may not be the basis of any legal action or criminal or civil liability against the psychologist

~~(3) When there is a clear and immediate probability of physical harm to the patient or client, to other individuals, or to society and the person licensed under this chapter communicates the information only to the potential victim, appropriate family member, or law enforcement or other appropriate authorities.~~

Section 4. Section 491.0147, Florida Statutes, is amended to read:

491.0147 Confidentiality and privileged communications.—Any communication between any person licensed or certified under this chapter and her or his patient or client is shall be confidential.

(1) This ~~privilege~~ ~~secrecy~~ may be waived under the following conditions:

(a) ~~(1)~~ When the person licensed or certified under this chapter is a party defendant to a civil, criminal, or disciplinary action arising from a complaint filed by the patient or client, in which case the waiver shall be limited to that action.

586-02489-19

20197048

(b) ~~(2)~~ When the patient or client agrees to the waiver, in writing, or, when more than one person in a family is receiving therapy, when each family member agrees to the waiver, in writing.

(2) This privilege must be waived, and the person licensed or certified under this chapter shall disclose patient and client communications to the extent necessary to warn any potential victim and to communicate the threat to a law enforcement agency, if a patient or client has communicated to such person a specific threat to cause serious bodily injury or death to an identified or readily available person, and the person licensed or certified under this chapter makes a clinical judgment that the patient or client has the apparent intent and ability to imminently or immediately carry out such threat. A disclosure of confidential communications by a person licensed or certified under this chapter when communicating a threat pursuant to this subsection may not be the basis of any legal action or criminal or civil liability against such person

~~(3) When, in the clinical judgment of the person licensed or certified under this chapter, there is a clear and immediate probability of physical harm to the patient or client, to other individuals, or to society and the person licensed or certified under this chapter communicates the information only to the potential victim, appropriate family member, or law enforcement or other appropriate authorities. There shall be no liability on the part of, and no cause of action of any nature shall arise against, a person licensed or certified under this chapter for the disclosure of otherwise confidential communications under this subsection.~~

586-02489-19

20197048

175 Section 5. For the purpose of incorporating the amendment  
176 made by this act to section 490.0147, Florida Statutes, in a  
177 reference thereto, paragraph (u) of subsection (1) of section  
178 490.009, Florida Statutes, is reenacted to read:

179 490.009 Discipline.—

180 (1) The following acts constitute grounds for denial of a  
181 license or disciplinary action, as specified in s. 456.072(2):

182 (u) Failing to maintain in confidence a communication made  
183 by a patient or client in the context of such services, except  
184 as provided in s. 490.0147.

185 Section 6. For the purpose of incorporating the amendment  
186 made by this act to section 491.0147, Florida Statutes, in a  
187 reference thereto, paragraph (u) of subsection (1) of section  
188 491.009, Florida Statutes, is reenacted to read:

189 491.009 Discipline.—

190 (1) The following acts constitute grounds for denial of a  
191 license or disciplinary action, as specified in s. 456.072(2):

192 (u) Failure of the licensee, registered intern, or  
193 certificateholder to maintain in confidence a communication made  
194 by a patient or client in the context of such services, except  
195 as provided in s. 491.0147.

196 Section 7. This act shall take effect July 1, 2019.

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1128

INTRODUCER: Rules Committee and Senator Diaz

SUBJECT: Emotional Support Animals

DATE: April 10, 2019

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

| ANALYST     | STAFF DIRECTOR | REFERENCE | ACTION           |
|-------------|----------------|-----------|------------------|
| 1. Akhavein | Becker         | AG        | <b>Favorable</b> |
| 2. Oxamendi | Imhof          | IT        | <b>Favorable</b> |
| 3. Akhavein | Phelps         | RC        | <b>Fav/CS</b>    |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1128 defines an emotional support animal as an animal that is not required to be trained to assist an individual with a disability. By virtue of its presence, the animal provides support to alleviate the symptoms or effects of an individual's disability.

The bill provides that an individual with a disability who needs an emotional support animal is entitled to full and equal access to all housing accommodations, unless the animal poses a threat to the safety or health of others or poses a threat of physical damage to the property of others. The bill authorizes a housing accommodation to request certain written documentation prepared by a health care practitioner which verifies the individual has a disability or a disability-related need, has been under the practitioner's care, and the emotional support animal is needed.

Under the bill, a person who falsifies written documentation or 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 individuals with disabilities.

The effective date of the bill is July 1, 2019.



## II. Present Situation:

### Americans with Disabilities Act

The Americans with Disabilities Act (ADA)<sup>1</sup> prohibits discrimination against individuals with disabilities<sup>2</sup> in employment,<sup>3</sup> in the provision of public services,<sup>4</sup> and in public accommodation or public entity.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> The work or tasks performed by a service dog must be directly related to the individual’s disability.<sup>8</sup> Emotional support, comfort, and companionship provided by a dog, even for therapeutic or medical purposes, are insufficient to classify it as a service animal.<sup>9</sup>

Service dogs must be harnessed or leashed, unless doing so interferes with the dog’s work or the individual’s disability prevents doing so.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

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 dog has been trained to perform.<sup>13</sup> Any other questions, including the nature and extent of the person’s disability or medical documentation, are prohibited.<sup>14</sup>

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<sup>1</sup> 42 U.S.C. s. 12101 *et seq.*

<sup>2</sup> 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).

<sup>3</sup> 42 U.S.C. s. 12112.

<sup>4</sup> 42 U.S.C. s. 12132.

<sup>5</sup> 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.

<sup>6</sup> 28 C.F.R. ss. 36.302(a) and (c)(7) and 35.136(a) and (g).

<sup>7</sup> 28 C.F.R. ss. 35.104 and 36.104.

<sup>8</sup> *Id.*

<sup>9</sup> *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](http://adata.org/sites/adata.org/files/files/Service_Animal_Booklet_2014(1).pdf) (Last visited March 19, 2019).

<sup>10</sup> 28 C.F.R. ss. 35.136(d) and 36.302(c)(4).

<sup>11</sup> 28 C.F.R. ss. 35.136(b) and 36.302(c)(2).

<sup>12</sup> 28 C.F.R. ss. 35.136(c) and 36.302(c)(3).

<sup>13</sup> 28 C.F.R. ss. 35.136(f) and 36.302(c)(6).

<sup>14</sup> *Id.*

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.<sup>15</sup> Miniature 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.<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup>

### **Fair Housing Act**

The federal Fair Housing Act (FHA)<sup>20</sup> prohibits discrimination against a person with a disability in the sale or rental of housing.<sup>21</sup> Similar to the ADA, the FHA also requires a landlord to provide reasonable accommodations, including permitting the use of service animals, to a person with a disability.<sup>22</sup> 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 FHA, if such an accommodation is reasonably necessary to allow a person with a handicap an equal opportunity to enjoy and use housing.<sup>23</sup> A reasonable accommodation may include waiving a no-pet rule or a pet deposit.<sup>24</sup>

<sup>15</sup> 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](http://www.ada.gov/service_animals_2010.pdf) (Last visited March 19, 2019).

<sup>16</sup> 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](http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.pdf) (Last visited March 19, 2019).

<sup>17</sup> 28 C.F.R. ss. 35.136(i) and 36.302(c)(9)ii..

<sup>18</sup> 42 U.S.C. ss. 12188 and 2000a-3.

<sup>19</sup> 42 U.S.C. s. 12188.

<sup>20</sup> 42 U.S.C. s. 3601 *et seq.*

<sup>21</sup> 42 U.S.C. s. 3604(f).

<sup>22</sup> *Id.*; 24 C.F.R. 5.303.

<sup>23</sup> 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).

<sup>24</sup> *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).

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.<sup>25</sup>

### **Florida Service Animal Law**

Section 413.08, F.S., is Florida's companion to the ADA and 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,<sup>26</sup> public employment,<sup>27</sup> and housing.<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup> 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 and what tasks it is trained to perform.<sup>31</sup> Additionally, a public accommodation:

- May not ask about the nature or extent of a disability;<sup>32</sup>

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<sup>25</sup> 73 Fed Reg. 63834.

<sup>26</sup> Section 413.08(1)(c), F.S., defines a "public accommodation" to mean "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..."

<sup>27</sup> Sections 413.08(5) and (7), F.S.

<sup>28</sup> Section 413.08(6), F.S.

<sup>29</sup> Section 413.08(1)(b), F.S.

<sup>30</sup> Sections 413.08(3), F.S.

<sup>31</sup> Sections 413.08(3)(b), F.S.

<sup>32</sup> *Id.*

- May require the service animal to be under the control of its handler and have a harness or leash;<sup>33</sup>
- May not impose a deposit or surcharge on an individual with a disability as a precondition, even if a deposit is routinely required for pets;<sup>34</sup>
- 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;<sup>35</sup>
- Is not required to provide care or food or a special location for the service animal or assistance with removing animal excrement;<sup>36</sup> and
- May exclude 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.<sup>37</sup>

Like the 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.<sup>38</sup> An individual with a disability who has a service animal is entitled to full and equal access to all housing accommodations, and may not be required to pay extra compensation for the service animal.<sup>39</sup>

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.<sup>40</sup>

### **Emotional Support Animals**

According to the United States Department of Housing and Urban Development (HUD),<sup>41</sup> an emotional support animal [ESA] is not a pet, but includes any animal providing emotional support to a person with a disability.<sup>42</sup> 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.<sup>43</sup> The most common type of ESA is a dog; however, other species of animals may be an ESA.

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<sup>33</sup> Sections 413.08(3)(a), F.S.

<sup>34</sup> Sections 413.08(3)(c), F.S.

<sup>35</sup> Sections 413.08(3)(d), F.S.

<sup>36</sup> Sections 413.08(3)(e), F.S.

<sup>37</sup> Sections 413.08(3)(f), F.S.

<sup>38</sup> Sections 413.08(6), F.S.

<sup>39</sup> Sections 413.08(6)(b), F.S.

<sup>40</sup> 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.

<sup>41</sup> 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 Mar. 18, 2019).

<sup>42</sup> U.S. Department of Housing and Urban Development, *FEHO Notice: FHEO-2013-01*, (Apr. 25, 20013), [https://www.hud.gov/sites/documents/SERVANIMALS\\_NTCFHEO2013-01.PDF](https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.PDF) (last visited Mar. 18, 2019).

<sup>43</sup> *Id.*

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;”<sup>44</sup>

Emotional support animals provide therapeutic support to relieve symptoms of psychiatric disabilities, including depression, anxiety, and post-traumatic stress disorder.<sup>45</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 413.08, F.S., to expand the rights and responsibilities of an individual with a disability to include use of an emotional support animal.

The bill defines the term “emotional support animal” to mean an animal that does not require training to do specific work or perform special tasks for an individual with a disability, but which provides support to alleviate one or more identified symptoms or effects of an individual’s disability.

The bill outlines those rights and responsibilities as:

- An individual with a disability who has an emotional support animal is entitled to full and equal access to all housing accommodations, unless the animal poses a threat to the safety or health of others or poses a threat of physical damage to the property of others, as is authorized under HUD guidelines and codified at 42 U.S.C. 3604(f)(9).
- A housing accommodation may not require such individual to pay extra compensation to live with an emotional support animal.
- A housing accommodation is authorized to request certain written documentation prepared by a health care practitioner which verifies the individual has a disability or a disability-related need, has been under the practitioner’s care, and the emotional support animal is needed.
- The Department of Health is authorized to adopt rules to administer the provisions of the bill.
- An individual with a disability is liable for certain damage done by her or his emotional support animal.
- A person who falsifies written documentation for an emotional support animal or misrepresents being qualified to use an emotional support animal commits a misdemeanor of the second degree, and must perform 30 hours of community service for an organization that serves individuals with disabilities.

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

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<sup>44</sup> *Id.*

<sup>45</sup> 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 Mar. 18, 2019).

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 413.08 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 Rules on April 10, 2019:**

The committee substitute clarifies circumstances under which housing providers may deny an application for housing with an emotional support animal, as authorized under HUD guidelines and codified at 42 U.S.C. 3604(f)(9).

- B. **Amendments:**

None.

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

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631160

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 04/10/2019 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Diaz) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 77  
and insert:  
provided for in this section, unless the specific 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, and such individual may not be

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





631160

12 And the title is amended as follows:  
13       Delete line 7  
14 and insert:  
15       all housing accommodations; providing an exception;  
16       prohibiting a housing

By Senator Diaz

36-01735-19

20191128\_\_

A bill to be entitled

An act relating to emotional support animals; amending s. 413.08, F.S.; revising and providing definitions; providing that an individual with a disability who has an emotional support animal or obtains an emotional support animal is entitled to full and equal access to all housing accommodations; prohibiting a housing accommodation from requiring such individual to pay extra compensation for such animal; authorizing a housing accommodation to request certain written documentation under certain circumstances; authorizing the Department of Health to adopt rules; specifying that an individual with a disability is liable for certain damage done by her or his emotional support animal; prohibiting the falsification of written documentation or other misrepresentation regarding the use of an emotional support animal; providing penalties; providing an effective date.

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

Section 1. Present paragraphs (a) through (d) of subsection (1) of section 413.08, Florida Statutes, are redesignated as paragraphs (b) through (e), respectively, present paragraph (d) of subsection (1) and paragraph (b) of subsection (6) are amended, a new paragraph (a) is added to subsection (1), and subsection (10) is added to that section, to read:

413.08 Rights and responsibilities of an individual with a disability; use of a service animal or an emotional support

Page 1 of 4

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

36-01735-19

20191128\_\_

animal; prohibited discrimination in public employment, public accommodations, and housing accommodations; penalties.—

(1) As used in this section and s. 413.081, the term:

(a) "Emotional support animal" means an animal that does not require training to do specific work or perform special tasks for an individual with a disability but, by virtue of its presence, provides support to alleviate one or more identified symptoms or effects of an individual's disability.

~~(e)-(d)~~ "Service animal" means an animal that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work done or tasks performed must be directly related to the individual's disability and may include, but are not limited to, guiding an individual who is visually impaired or blind, alerting an individual who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting an individual who is having a seizure, retrieving objects, alerting an individual to the presence of allergens, providing physical support and assistance with balance and stability to an individual with a mobility disability, helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder during an anxiety attack, or doing other specific work or performing other special tasks. A service animal is not a pet. For purposes of subsections (2), (3), and (4), the term "service animal" is limited to a dog or miniature horse. The crime-deterrent effect of an animal's

Page 2 of 4

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

36-01735-19

20191128\_\_

59 presence and the provision of emotional support, well-being,  
60 comfort, or companionship do not constitute work or tasks for  
61 purposes of this definition.

62 (6) An individual with a disability is entitled to rent,  
63 lease, or purchase, as other members of the general public, any  
64 housing accommodations offered for rent, lease, or other  
65 compensation in this state, subject to the conditions and  
66 limitations established by law and applicable alike to all  
67 persons.

68 (b) 1. An individual with a disability who has a service  
69 animal or who obtains a service animal is entitled to full and  
70 equal access to all housing accommodations provided for in this  
71 section, and such ~~individual a person~~ may not be required to pay  
72 extra compensation for such animal. This subparagraph does not  
73 apply to an emotional support animal.

74 2.a. An individual with a disability who has an emotional  
75 support animal or who obtains an emotional support animal is  
76 entitled to full and equal access to all housing accommodations  
77 provided for in this section, and such individual may not be  
78 required to pay extra compensation for such animal. If an  
79 individual's disability or disability-related need is not  
80 readily apparent to a housing accommodation, the housing  
81 accommodation may request written documentation prepared by a  
82 health care practitioner, as defined in s. 456.001, which  
83 verifies that the individual has a disability or a disability-  
84 related need and has been under the practitioner's care or  
85 treatment for such disability or need, and the animal provides  
86 support to alleviate one or more identified symptoms or effects  
87 of the individual's disability or disability-related need.

36-01735-19

20191128\_\_

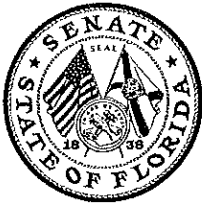
88 b. The written documentation, as specified in sub-  
89 subparagraph a., must be prepared in a format prescribed by the  
90 Department of Health in rule and may not be prepared by a health  
91 care practitioner whose exclusive service to the individual with  
92 a disability is preparation of the written documentation in  
93 exchange for a fee. The Department of Health may adopt rules to  
94 administer this sub-subparagraph.

95 c. This subparagraph does not apply to a service animal.

96 3. An individual with a disability ~~However, such a person~~  
97 ~~is liable for any damage done to the premises or to another~~  
98 ~~person on the premises by her or his service the animal or~~  
99 ~~emotional support animal.~~ A housing accommodation may request  
100 proof of compliance with vaccination requirements.

101 (10) A person who falsifies written documentation, as  
102 specified in sub-subparagraph (6)(b)2.a., for an emotional  
103 support animal or otherwise knowingly and willfully  
104 misrepresents herself or himself, through conduct or verbal or  
105 written notice, as using an emotional support animal and being  
106 qualified to use an emotional support animal commits a  
107 misdemeanor of the second degree, punishable as provided in s.  
108 775.082 or s. 775.083, and must perform 30 hours of community  
109 service for an organization that serves individuals with  
110 disabilities, or for another entity or organization at the  
111 discretion of the court, to be completed in not more than 6  
112 months.

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** March 27, 2019

---

I respectfully request that **Senate Bill # 1128**, relating to Emotional Support Animals, be placed on the:

- ☐ Committee agenda at your earliest possible convenience.
- ☒ Next committee agenda.

A handwritten signature in black ink, appearing to read "M. Diaz", is written over a horizontal line.

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)

4/10

Meeting Date

1128

Bill Number (if applicable)

Topic Emotional Support Animals

Amendment Barcode (if applicable)

Name Andrew Rutledge

Job Title

Address 200 S. Monroe St

Phone 850-244-1400

Street

Tallahassee

City

FL

State

32312

Zip

Email andrewr@gmail.com

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

APPEARANCE RECORD

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

4/10/19

Meeting Date

SB 1128  
~~301~~  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Greg Roud

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

Address 9166 Sunrise Dr

Phone \_\_\_\_\_

Street

Largo

City

FL

State

33773

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

# CourtSmart Tag Report

**Room:** EL 110  
**Caption:** Senate Rules Committee

**Case No.:**  
**Judge:**

**Type:**

**Started:** 4/10/2019 10:02:08 AM

**Ends:** 4/10/2019 11:27:10 AM

**Length:** 01:25:03

10:02:07 AM Meeting called to order by Chair Benacquisto  
10:02:12 AM Roll call  
10:02:16 AM Quorum present  
10:02:57 AM Senator Torres recognized to introduce CS/CS/SB 34  
10:03:18 AM Questions?  
10:03:59 AM Debate?  
10:04:02 AM Senator Torres waives his close  
10:04:07 AM Roll call  
10:04:24 AM CS/CS/SB 34 reported favorably  
10:04:48 AM Senator Diaz recognized to introduce SB 1128  
10:05:48 AM Senator Diaz recognized to introduce amendment 631160  
10:06:14 AM Questions?  
10:06:19 AM Debate?  
10:06:20 AM Amendment 631160 adopted  
10:06:21 AM Back on the bill as amended  
10:06:45 AM Public testimony  
10:06:47 AM Andrew Rutledge of Florida Realtors waives in support  
10:06:50 AM Greg Pound speaks on CS/SB 1128  
10:07:05 AM Debate?  
10:07:45 AM Senator Diaz waives his close  
10:07:49 AM Roll call  
10:07:58 AM CS/SB 1128 reported favorably  
10:08:19 AM Senator Simpson recognized to introduce CS/SB 418  
10:09:03 AM Questions?  
10:09:06 AM Senator Rodriguez asks a question  
10:09:16 AM Senator Simpson in response  
10:09:56 AM Senator Rodriguez asks a question  
10:10:12 AM Senator Simpson in response  
10:11:07 AM Senator Thurston asks a question  
10:11:17 AM Senator Simpson in response  
10:11:52 AM Senator Thurston asks a question  
10:13:03 AM Senator Simpson in response  
10:13:53 AM Vice Chair Gibson asks a question  
10:14:04 AM Senator Simpson in response  
10:14:51 AM Vice Chair Gibson asks a question  
10:15:34 AM Senator Simpson in response  
10:16:24 AM Vice Chair Gibson asks a question  
10:17:45 AM Senator Simpson in response  
10:19:21 AM Senator Thurston asks a question  
10:19:32 AM Senator Simpson in response  
10:20:04 AM Senator Thurston asks a question  
10:20:11 AM Senator Simpson in response  
10:20:24 AM Chair Benacquisto asks a question  
10:20:42 AM Senator Simpson in response  
10:21:34 AM Senator Simpson recognized to introduce amendment 789626  
10:22:13 AM Questions?  
10:22:16 AM Debate?  
10:22:20 AM Amendment 789626 adopted  
10:22:31 AM Back on the bill as amended  
10:22:34 AM Debate?  
10:22:38 AM Senator Rodriguez in debate  
10:23:56 AM Senator Lee in debate

10:26:16 AM Senator Thurston in debate  
10:27:16 AM Vice Chair Gibson in debate  
10:27:30 AM Senator Simpson recognized to close on CS/CS/SB 418  
10:30:26 AM Roll call  
10:31:38 AM CS/CS/SB 418 reported favorably  
10:31:55 AM Senator Harrell recognized to introduce CS/SB 980  
10:33:54 AM Questions?  
10:33:57 AM Public testimony  
10:34:05 AM Scott Howell of the Florida Coalition Against Domestic Violence waives in support  
10:34:08 AM Debate?  
10:34:11 AM Senator Harrell waives her close  
10:34:18 AM Roll call  
10:34:26 AM CS/SB 980 reported favorably  
10:34:53 AM Senator Flores recognized to introduce CS/CS/SB 1666  
10:35:53 AM Senator Flores recognized to introduce amendment 416476  
10:36:20 AM Questions?  
10:36:24 AM Public testimony  
10:36:28 AM Edgar Fernandez waives in support  
10:36:33 AM Debate?  
10:36:35 AM Senator Montford in debate  
10:36:59 AM Amendment 416476 adopted  
10:37:17 AM Back on the bill as amended  
10:37:23 AM Public testimony  
10:37:29 AM Bonnie Basham of Boat U.S waives in support  
10:37:32 AM Jerry Paul of the American Cruising Association waives in support  
10:37:34 AM Debate?  
10:37:38 AM Senator Flores waives her close  
10:37:43 AM Roll call  
10:37:46 AM CS/CS/CS/SB 1666 reported favorably  
10:38:03 AM Senator Montford recognized to introduce CS/SB 354  
10:39:32 AM Questions?  
10:39:36 AM Public testimony  
10:39:41 AM Stephen Winn of the Florida Osteopathic Medical Association waives in support  
10:39:47 AM Andrea DeMichael of the Florida Freedom Alliance speaks on CS/SB 354  
10:43:24 AM Mackenzie Fraser speaks on CS/SB 354  
10:46:47 AM Doug Bell of the American Academy of Pediatrics waives in support  
10:46:58 AM Jarrod Fowler of the Florida Medical Association waives in support  
10:47:02 AM Greg Pound speaks on CS/SB 354  
10:48:07 AM Debate?  
10:48:09 AM Senator Stargel asks a question  
10:48:42 AM Senator Montford in response  
10:48:48 AM Debate?  
10:48:51 AM Senator Montford recognized to close on CS/SB 354  
10:49:05 AM Roll call  
10:49:46 AM CS/SB 354 reported favorably  
10:50:17 AM Senator Bradley motions affirmative after the vote on CS/CS/SB 34 and SB 1128  
10:51:04 AM Senator Montford motions affirmative after the vote on SB 1128  
10:51:06 AM Senator Braynon motions affirmative after the vote on SB 1128, CS/CS/SB 418, CS/SB 980 and CS/CS/CS/SB 1666  
10:51:12 AM Senator Farmer motions affirmative after the vote on CS/CS/SB 418, CS/SB 980 and CS/CS/CS/SB 1666  
10:51:13 AM Senator Book motions affirmative after the vote on CS/CS/SB 418  
10:51:37 AM Vice Chair Gibson motions affirmative after the vote on CS/CS/CS/SB 1666  
10:51:38 AM Senator Lee recognized to introduce SB 702  
10:55:07 AM Questions?  
10:55:12 AM Debate?  
10:55:15 AM Senator Lee waives his close  
10:55:22 AM Roll call  
10:55:25 AM SB 702 reported favorably  
10:55:57 AM Senator Lee recognized to introduce SB 7032  
10:57:09 AM Questions?  
10:57:11 AM Debate?  
10:57:14 AM Senator Lee waives his close



10:57:20 AM Roll call  
10:57:22 AM SB 7032 reported favorably  
10:57:55 AM Vice Chair Gibson recognized to introduce CS/SB 600  
10:59:04 AM Questions?  
10:59:07 AM Senator Brandes asks a question  
10:59:22 AM Vice Chair Gibson in response  
10:59:31 AM Public testimony  
10:59:35 AM Kevin Noonan of the Orlando Utilities Commission waives in support  
10:59:36 AM Suzanne Goss of JEA waives in support  
10:59:50 AM Debate?  
10:59:57 AM Roll call  
11:00:03 AM CS/SB 600 reported favorably  
11:00:20 AM Chair turned to Vice Chair Gibson  
11:00:46 AM Senator Hutson recognized to introduce CS/SB 1002  
11:01:04 AM Questions?  
11:01:07 AM Public testimony  
11:01:12 AM Vicki Wooldridge of South Florida Regional Transportation Authority waives in support  
11:01:21 AM Debate?  
11:01:25 AM Senator Hutson waives his close  
11:01:34 AM Roll call  
11:01:40 AM CS/SB 1002 reported favorably  
11:02:13 AM Senator Stargel recognized to introduce CS/SB 1200  
11:02:38 AM Senator Stargel recognized to introduce amendment 328940  
11:03:15 AM Questions?  
11:03:28 AM Amendment 328940 adopted  
11:03:44 AM Senator Stargel recognized to introduce amendment 455976  
11:03:57 AM Questions?  
11:04:00 AM Amendment 455976 adopted  
11:04:15 AM Back on the bill as amended  
11:04:21 AM Public testimony  
11:04:27 AM Warren Husband of the Florida Associated General Contractors Council waives in support  
11:04:31 AM Kari Hebrank of the National Utility Contractors Association of Florida waives in opposition  
11:04:43 AM Debate?  
11:04:46 AM Senator Stargel waives her close  
11:04:57 AM Roll call  
11:05:17 AM CS/CS/SB 1200 reported favorably  
11:05:36 AM Chair turned back to Chair Benacquisto  
11:05:47 AM Senator Brandes recognized to introduce SB 530  
11:06:27 AM Public testimony  
11:06:32 AM Andy Thomas of the Florida Public Defender Association waives in support  
11:06:34 AM Cesar Grajales of Americans for Prosperity waives in support  
11:06:35 AM Debate?  
11:06:37 AM Senator Brandes waives his close  
11:06:43 AM Roll call  
11:06:51 AM SB 530 reported favorably  
11:07:12 AM Senator Brandes recognized to introduce SJR 362  
11:07:25 AM Questions?  
11:07:30 AM Public testimony  
11:07:33 AM Adam Basford of the Florida Farm Bureau waives in support  
11:07:35 AM Brenda Fischer waives in support  
11:07:40 AM Rich Templin of the Florida AFL-CIO speaks on SJR 362  
11:09:04 AM Senator Lee asks a question  
11:10:49 AM Rich Templin in response  
11:12:13 AM Amy Datz speaks on SJR 362  
11:12:13 AM Barbara Alber waives in support  
11:12:14 AM Justin Peacock waives in support  
11:12:15 AM Kammeron Brown waives in support  
11:12:16 AM J.B Clark of the Florida Electrical Worker Association waives in support  
11:12:17 AM Maureen Gibson waives in support  
11:12:18 AM Rick Poulette waives in support  
11:12:20 AM Barbara DeVane of FL NOW waives in support  
11:12:23 AM Jim Kallingen waives in support

**11:12:26 AM** MaryAnn Taylor waives in support  
**11:12:30 AM** Robert Doane waives in support  
**11:12:35 AM** Donald Brown waives in support  
**11:13:10 AM** Jeff Kottkamp waives in support  
**11:13:15 AM** Cesar Grajales of Americans for Prosperity waives in support  
**11:13:20 AM** Ellen Baker waives in support  
**11:13:45 AM** Tim Nungesser of NFIB waives in support  
**11:14:00 AM** Debate?  
**11:14:14 AM** Senator Lee in debate  
**11:15:41 AM** Senator Simmons in debate  
**11:22:11 AM** Senator Book in debate  
**11:22:26 AM** Senator Brandes recognized to close on SJR 362  
**11:24:07 AM** Roll call  
**11:24:10 AM** SJR 362 reported favorably  
**11:24:47 AM** Senator Book recognized to introduce SB 7048  
**11:25:50 AM** Questions?  
**11:25:52 AM** Debate?  
**11:25:55 AM** Senator Book waives her close  
**11:26:00 AM** Roll call  
**11:26:03 AM** SB 7048 reported favorably  
**11:26:36 AM** Senator Thurston motions affirmative after the vote on CS/CS/CS/SB 1666  
**11:26:40 AM** No objections on motions made  
**11:26:53 AM** Meeting adjourned