

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Dockery, Vice Chair

MEETING DATE: Tuesday, February 7, 2012**TIME:** 1:30 —3:30 p.m.**PLACE:** *James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building***MEMBERS:** Senator Detert, Chair; Senator Dockery, Vice Chair; Senators Flores, Lynn, Montford, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Consideration of proposed committee bill:			
1	SPB 7208	Notaries Public; Revising the application process and requirements for appointment as a notary public; requiring that the Department of State adopt rules for the registration and approval of entities that offer courses on the duties of a notary public; requiring the department to investigate complaints against a notary public and submit findings to the Executive Office of the Governor; revising provisions relating to the use of signature stamps; providing that a notary who notarizes the signature of a person who is not in the presence of the notary is subject to suspension; transferring certain responsibilities relating to the administration of notaries public from the Executive Office of the Governor to the Secretary of State, etc.	Submitted as Committee Bill
Consideration of proposed committee bill:			
2	SPB 7210	Tipped Employees; Authorizing an employer to elect to guarantee that all tipped employees receive a wage, including tips, equal to a minimum percentage of the state minimum wage; requiring that the employer make the election in writing and prominently display it in the employer's premises; providing that the employer is subject to civil actions and fines if the employer fails to pay a tipped employee the wage guaranteed under the act or engages in any discriminatory or retaliatory action; providing that the act does not affect the employer's obligation to comply with the federal Fair Labor Standards Act, etc.	Submitted as Committee Bill
3	SB 1048 Oelrich (Identical H 709)	Innovation Incentive Program; Conforming an obsolete reference to the former Office of Tourism, Trade, and Economic Development; revising requirements for legislative notice, review, and objections to the award of incentive funds under the program, etc. CM 02/07/2012 Favorable BC	Favorable Yeas 4 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, February 7, 2012, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 438 Bennett (Similar CS/H 275)	Consumer Finance Charges; Increasing the proportionate loan amounts that are subject to descending maximum rates of interest; increasing the maximum delinquency charge that may be imposed for each loan payment in default for not less than a specified time; revising the maximum amount that a lender may impose as a service charge on a borrower who gives the lender a bad check in full or partial payment of a loan, etc. BI 01/09/2012 Favorable CM 02/07/2012 Favorable BC	Favorable Yeas 4 Nays 0
5	SB 1242 Hays (Similar H 945)	Broadband Internet Service; Adding to the legislative findings that the sustainable adoption of broadband Internet service is critical to community development; designating the Department of Economic Opportunity rather than the Department of Management Services as the agency to receive and manage all federal broadband initiative funds for the state; requiring the Department of Economic Opportunity to establish a public-private partnership to work with certain private and governmental organizations to oversee broadband development; revising the oversight criteria, etc. CU 01/23/2012 Favorable CM 02/07/2012 Favorable BC	Favorable Yeas 4 Nays 0
6	SB 946 Bennett (Compare H 923)	Economic Development; Authorizing Enterprise Florida, Inc., to establish a statewide golf trail; requiring Enterprise Florida, Inc., to cooperate with various entities; requiring Enterprise Florida, Inc., to designate a proprietary name for the statewide golf trail; authorizing Enterprise Florida, Inc., to license the name and receive compensation for such licensing; requiring Enterprise Florida, Inc., to maintain and protect the name, brand, proprietary marks, and intellectual property of the statewide golf trail in a specified manner; prohibiting Enterprise Florida, Inc., from accepting certain financial responsibility or liability for the statewide golf trail; directing various economic development and tourism promotion agencies to support the statewide golf trail, etc. CM 02/07/2012 Fav/CS EP BC	Fav/CS Yeas 4 Nays 0

Other Related Meeting Documents

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, February 7, 2012, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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An electronic copy of the Appearance Request form is available to download from any Senate committee page on the Senate's website, www.flsenate.gov.

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 Commerce and Tourism Committee

BILL: SPB 7208

INTRODUCER: For consideration by the Commerce and Tourism Committee

SUBJECT: Notaries Public

DATE: February 6, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

SPB 7208 transfers the current notary administration responsibilities of the Executive Office of the Governor (EOG) that relate to the education and investigation of notaries public to the Department of State (DOS) under a type two transfer, as defined in s. 20.06(2), F.S. To fund these transferred responsibilities, the bill allocates \$2.35 from the \$4 notary public application surcharge to be deposited in DOS's Operating Trust Fund.

In addition, the bill:

- Transfers the notary education requirement from s. 668.50, F.S., to s. 117.01, F.S., and amends the education requirement to eliminate the 3-hour provision.
- Revises notary application requirements.
- Reiterates current law under s. 817.155, F.S., which provides that an applicant who submits an application that he or she knows to contain any false, fictitious, or fraudulent statement commits a felony of the third degree.
- Requires DOS to provide conspicuous notice to applicants on the notary public application form that, if an applicant misrepresents information on the application, he or she commits a felony of the third degree pursuant to s. 817.155, F.S.
- Requires any entity issuing bonds for notaries public to submit an annual report to DOS as to whether any claims were paid and the circumstances under which those claims were paid.
- Requires DOS to inform the EOG of its findings related to any investigation of complaints made against notary publics.
- Makes stylistic changes and deletes two obsolete provisions concerning an increase in the required bond amount on January 1, 1999, and the required use of rubber stamps after January 1, 1992.

This bill substantially amends the following sections of the Florida Statutes: 117.01, 117.021, 117.05, 117.103, 117.107, and 668.50.

II. Present Situation:

Notary Public Administration¹

Notaries public are referenced in the State Constitution as public officers, which are to be commissioned by the Governor.²

A notary public has been defined as a
public officer whose function it is to attest and certify, by his or her hand
and official seal, certain classes of documents in order to give them credit
and authenticity in foreign jurisdictions, to take acknowledgements of and
certify deeds and other conveyances, and to perform certain official acts,
chiefly in commercial matters.³

Simply stated, a notary public verifies the identities of individuals involved in legal transactions and is the gatekeeper for preventing fraudulent transactions. In Florida, there are two types of notaries: notaries public and civil-law notaries. Chapter 117, F.S., provides for the appointment and commissioning of notaries public and ch. 118, F.S., provides for the appointment of civil-law notaries.⁴ The main distinctions between notaries public and civil-law notaries are that civil-law notaries must be attorneys and may issue “authentic acts,” which are more likely to be legally recognized by a foreign country than notarizations by notaries public.

While different divisions with DOS have administered the notary section, currently notaries are administered by both the Division of Corporations (division) within DOS and the Executive Office of the Governor (EOG).

The EOG’s notary section is responsible for appointing, investigating, and educating notary public applicants. The EOG also has the discretion to suspend notary public commissions. The division is responsible for processing notary public applications, approving and recording a required \$7,500 bond, issuing notary public commissions and certificates of notarial authority, and recording the results of actions taken by the EOG against a notary public. The division notes

¹ Adapted from Senate Bill Analysis and Fiscal Impact Statement for CS/CS/CS/SB 2330 (April 14, 2010).

² See Fla. Const. art. II, s. 5, and art. IV, s. 1. Note: Notaries public differ from other types of public officers (e.g. legislators, law enforcement, clerks of court). For example, notaries are not eligible for the same types of benefits and protections provided for public officers under chs. 111 and 112, F.S.

³ 66 C.J.S. Notaries s. 1 (2011); see also Commercial Union Ins. Co. of New York v. Burt Thomas-Aitken Const. Co., 230 A.2d 498, 499 (N.J. 1967). The dictionary defines a notary public as a “person authorized by a state to administer oaths, certify documents, attest to the authenticity of signatures, and perform official acts in commercial matters, such as protesting negotiable instruments.” Black’s Law Dictionary (8th ed. 2004).

⁴ Section 118.10(3), F.S., authorizes a civil-law notary to “authenticate or certify any document, transaction, event, condition, or occurrence” and s. 118.10(7), F.S., specifies that civil-law notaries have “all the powers of a notary public under any law of this state.”

that “[c]oordination between the [d]ivision and the Governor’s Office is essential in carrying out the duties and responsibilities of the notary public program.”⁵

The division reported that in FY 2010-11 there were 102,517 notary public commissions (including renewals). The division has also reported that as of January 2011, there are 397,129 notary public commissions and 108 civil-law notary appointments active in Florida.⁶

Legal Qualifications for Florida Notaries Public

Section 117.01, F.S., requires notary public applicants to meet certain legal qualifications prior to being commissioned by the Governor. These legal qualifications require an applicant to:

- Be at least 18 years of age;
- Be a legal resident of the state and maintain such residency throughout his or her 4-year term of appointment;
- Be able to read, write, and understand the English language;
- Complete an application form prescribed by DOS;⁷
- Submit to DOS an affidavit of good character from someone unrelated to the applicant and who has known the applicant for 1 year or more;
- Submit to DOS a list of all professional licenses and commissions issued by the state during the previous 10 years and a statement as to whether or not the applicant has had any such license or commission revoked or suspended;
- Submit to DOS a statement as to whether or not the applicant has been convicted of a felony, and if so, the nature of the felony and whether or not the applicant’s civil rights have been restored;
- Take an oath that the application for a commission is true and correct, that he or she has read ch. 117, F.S., that he or she knows the duties, responsibilities, limitations, and powers of a notary public, and that he or she will honestly, diligently, and faithfully discharge the duties of the notary public;⁸
- Obtain a bond for \$7,500, payable to any individual harmed as a result of a breach of duty by the notary public acting in his or her official capacity; and
- Provide any other information the Governor deems necessary for determining whether the applicant is eligible to be commissioned.

In addition, s. 668.50(11)(b), F.S., requires first-time notary public applicants to submit proof that the applicant has, within 1 year prior to the application, completed at least 3 hours of interactive or classroom instruction, which covers electronic notarization and the duties of the notary public.

Civil-law notaries are appointed by the Secretary of State. Pursuant to s. 118.10(1)(b), F.S., applicants must be a Florida Bar member in good standing who has practiced law for at least 5

⁵ Department of State Sunset Review Agency Report to the Legislature, July 2008. Page IV-68.

⁶ Information received from the Department of State on January 26, 2012, on file with the Budget Subcommittee on Transportation, Tourism and Economic Development.

⁷ A person must complete a new application when applying for a new commission, renewal of a commission, or subsequent commission.

⁸ A person taking the oath is subject to the penalty of perjury under s. 837.012, F.S., which is a misdemeanor of the 1st degree.

years.⁹ Additionally, under DOS administrative rule, 1N-6.001, F.A.C., civil-law notary applicants must complete an application form as prescribed by DOS and must successfully complete a civil-law notary examination with a score of 70 percent or higher on the exam. The Secretary of State may adopt rules prescribing procedures for the disciplining of civil-law notaries, including the suspension and revocation of appointments.¹⁰ However, the Secretary of State is prohibited from regulating and disciplining “any civil-law notary for, or with regard to, any action or conduct that would constitute the practice of law in this state, except by agreement with The Florida Bar.”¹¹

Application Fees

Section 117.01(2), F.S., requires notary public applicants, including renewals, to pay a \$25 application fee and a \$10 commission fee.¹² In addition, applicants must pay a \$4 fee, which is appropriated to the EOG to be used to educate and assist notaries.¹³

Civil-law notary applicants, pursuant to 1N-6.001(1)(b)2., F.A.C., must pay a \$50 application processing fee.¹⁴ In addition, applicants may pay up to \$200 to take the civil-law notary examination.¹⁵

Notary Section of the Executive Office of the Governor

Section 117.01, F.S., vests the Governor with the authority to appoint and commission as many notaries public as he deems necessary. The Governor is also responsible for disciplining and providing educational assistance to notaries public.¹⁶

The notary section of the Executive Office of the Governor (EOG) states that it carries out its function by:

publishing and distributing educational materials, particularly the notary laws and the Governor’s Reference Manual for Notaries; by answering telephone inquiries from Notaries; by conducting notary seminars; and maintaining the on-line Notary Education Course.... The Notary Section also assists the Governor by reviewing “special review” applications

⁹ Chapter 1N-6.001(1)(b)1., F.A.C., requires civil-law notary applicants to submit a certificate of good standing from the Supreme Court of Florida to DOS within 90 days of the date of application.

¹⁰ Section 118.10(5)(e), F.S. See also, ch. 1N-6.001, F.A.C.

¹¹ Section 118.10(6), F.S.

¹² Because there are approximately 100,000 applications a year, the division collects an estimated \$3.5 million annually, which is deposited into General Revenue. Statistics provided by the Division of Corporations, December, 2012, on file with the Budget Subcommittee on Transportation, Tourism and Economic Development.

¹³ Because there are approximately 100,000 applications a year, the EOG collects an estimated \$400,000 annually, which is deposited in the Grants & Donations Trust Fund. Statistics provided by the notary section of the EOG and by the Division of Corporations, December, 2012, on file with the Budget Subcommittee on Transportation, Tourism and Economic Development.

¹⁴ Civil-law notaries also pay \$50 a year when submitting annual reports. Because the current 95 civil-law notaries retain their appointment as long as they file an annual report, DOS collects approximately \$4,750 annually, which is deposited into General Revenue. Statistics provided by the Division of Corporations, December, 2012, on file with the Budget Subcommittee on Transportation, Tourism and Economic Development.

¹⁵ See ch. 1N-6.001(2)(c), F.A.C.

¹⁶ See s. 117.01, F.S.

related to the applicants' eligibility for appointment and by reviewing complaints against Notaries and recommending disciplinary action when appropriate.¹⁷

The notary section, by and large, fulfills its educational assistance requirement by approving notary education curricula for certain vendors. Applicants can only take the required 3-hour class from a notary education vendor that has a core curriculum approved by the EOG. In Florida there are 17 vendors that provide notary public applicants with the required 3-hour notary public education course.¹⁸ Many of these vendors also offer "one-stop" type services for notary applicants by providing them with the surety bond (directly or in coordination with an underwriter), educational course, application forms, and notary equipment required by statute.

Another important function of the notary section is the investigation of notaries or notary public applicants. Investigations are conducted on applicants under "special review," when their applications have been flagged by a vendor or the division. Under s. 117.01(2), F.S., an applicant is required to self-disclose if he or she has ever been convicted of a felony, which may trigger an investigation. In addition, the notary section may receive complaints by phone or mail, which may lead to the investigation of a commissioned notary public or an applicant. Section 117.01(8), F.S., requires a surety company to notify the Governor when a claim for a bond has been paid and the circumstances under which the claim was paid, which could lead to an investigation of a commissioned notary.

Usually during an investigation a criminal background check is performed, which is not statutorily required for notary public applicants under ch. 117, F.S. The notary section reports that it coordinates investigations with law enforcement and the Florida Bar if the notary is also an attorney.

The notary section of the EOG has no role in the administration, investigation, or appointment of civil-law notaries.

Notary Section of the Division of Corporations

The division serves solely in a ministerial capacity when processing notary public applications, issuing certificates of notarial authority, and recording bonds. The division does not verify application information or investigate notary public applicants or commissioned notaries. If a concern with the application is identified during processing, it is referred to the EOG for review and investigation.

The division reports that it receives all of its notary public applications from vendors that provide a "one-stop" type service for those seeking to become a notary public. These companies provide surety services (directly or through its affiliates) to meet the \$7,500 statutory bond requirement for notaries public, ensure that the educational courses satisfy the 3-hour notary public educational course required by statute, ensure that the application forms meet with the department's approval, and may provide notary equipment, such as stamps and embossers, to

¹⁷ See notary section website, available at http://www.flgov.com/notary_intro (last visited 2/6/2012).

¹⁸ A list of vendors with approved curricula is available at http://www.flgov.com/notary_education (last visited 2/6/2012).

notaries once they have been commissioned. These companies submit their customers' applications, along with proof of attendance of the educational course and the required bond, to DOS. DOS receives the applications and reviews them for completeness to ensure they meet the statutory requirements under ch. 117, F.S., before processing the application and printing a commissioning certificate.

The division reports that complaints concerning notaries public are referred to the notary section of the EOG.

Although the division reports that it operates solely in a ministerial capacity when processing notary public applications, it has a different role with civil-law notaries. Statutorily, the Secretary of State has the authority to develop application processes, prescribe educational requirements, investigate applications, appoint civil-law notaries, and suspend or revoke the appointments of civil-law notaries under ch. 118, F.S.¹⁹ These functions are carried out by the division. However, to date, the division has not deemed it necessary to investigate civil-law notaries or suspend or revoke a civil-law notary's appointment.²⁰

Notary Misconduct

It is reported that notary public misconduct has been a problem in the United States ever since the first notary public was appointed in the American colonies in 1639.²¹ Examples of notary public misconduct include the forgery of signatures, the notarization of signatures of persons not present before the notary, and the notarization of blank documents that are later drafted with fraudulent terms.²² The National Notary Association (NNA) reports that, in Florida, notary public misconduct is especially prevalent in fraudulent real estate transactions where the elderly and those who speak English poorly are targeted.²³ Notary misconduct is punishable as a felony of the third degree or misdemeanor of the second degree.²⁴

¹⁹ See s. 118.10(2), (5)(a)-(g), F.S. See also, ch. 1N-6.001, F.A.C.

²⁰ *Supra* fn. 30.

²¹ Anderson, John C., and Closen, Michael L; A Proposed Code of Ethics for Employers and Customers of Notaries: A Companion to the Notary Public Code of Professional Responsibility; 32 J. Marshall L. Rev. 887 (Summer 1999).

²² See Lilly, Joanna, The Unlawful Notary, which gives an account of various cases of notary fraud, available at <http://www.lastwordedits.com/unlawfulnotary.pdf> (last visited 2/6/2012). Note: This is not an exhaustive list of the types of notary misconduct.

²³ National Notary Association, The Growing Real Estate Problem in Florida: How Requiring a Thumbprint in a Notary Recordbook Can Significantly Diminish Real Property Scams in the State, March 2003, pg. 4, available at <http://www.nationalnotary.org/userimages/reFraudfla.pdf> (last visited 2/6/2012).

²⁴ Section 117.105, F.S., provides that "a notary public who falsely or fraudulently takes an acknowledgment of an instrument as a notary public or who falsely or fraudulently makes a certificate as a notary public or who falsely takes or receives an acknowledgment of the signature on a written instrument is guilty of a felony of the third degree." Pursuant to s. 117.05(1), F.S., a notary public is guilty of a felony of the third degree if the notary uses a commission in other than the notary's real name and if the notary notarizes his or her own signature. In addition, it is unlawful to possess a notary public official seal or any papers or copies relating to notarial acts, impersonate a notary public, or to knowingly act as a notary public after a commission has expired; all are a misdemeanor of the second degree. See s. 117.05, F.S.

Agency Sunset Review of the Department of State

Sections 11.901 – 11.920, F.S., were known as the Florida Government Accountability Act (act).²⁵ Under this act, most state agencies and their respective advisory committees were subject to a “sunset” review process to determine whether the agency should be retained, modified, or abolished. The review process for DOS began in July of 2008.

The Senate Commerce Committee recommended consolidation of responsibilities related to administration of the notary public commissioning process either within the division or within EOG.²⁶

III. Effect of Proposed Changes:

Section 1 amends s. 117.01, F.S., to transfer the current notary administration responsibilities of EOG that relate to the education and investigation of notaries public to DOS. To enable DOS to carry out these responsibilities, this section of the bill allocates \$2.35 from the \$4 notary public application surcharge to be deposited in the department’s Operating Trust Fund. DOS is to use the \$2.35 surcharge to educate and assist notaries public, and to receive and investigate complaints against notaries public. The other \$1.65 from the surcharge is to be deposited into the EOG’s Grants and Donations Trust Fund to continue commissioning and disciplining responsibilities.

The notary education requirement for first-time applicants is transferred from s. 668.50, F.S., to s. 117.01(4), F.S., and education requirement is amended to eliminate the 3-hour provision. DOS is required to approve entities or individuals who offer training courses.

This section of the bill also revises the notary application requirements to:

- Require an applicant to provide his or her “legal” name.
- Require the applicant to provide his or her citizenship status.
- Delete the requirement for applicants to provide an affidavit of good character from an unrelated person who has known the applicant for 1 year or more.
- Require the applicant to state whether he or she has previously been commissioned as a notary public in Florida.
- Require the applicant to state whether he or she has been convicted “or found guilty” of a felony.

This section is amended to reiterate current law under s. 817.155, F.S., by providing that an applicant who submits an application that he or she knows to contain any false, fictitious, or fraudulent statement commits a felony of the third degree. Additionally, DOS is required to provide conspicuous notice to applicants on the notary public application form that, if an

²⁵ Repealed by ch. 2011-34, L.O.F.

²⁶ See Senate Commerce Committee, Issue Brief 2009-308: Agency Sunset Review of the Division of Corporations of the Department of State (October 2008), available at http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-308cm.pdf (last visited 2/6/2012); and Interim Report 2010-212: Agency Sunset Review of the Division of Corporations of the Department of State (December 2009), available at http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-212cm.pdf (last visited 2/6/2012).

applicant misrepresents information on the application, he or she commits a felony of the third degree pursuant to s. 817.155, F.S.

Any person is permitted to file a complaint with DOS alleging a violation of ch. 117, F.S., and requires that DOS conduct a preliminary investigation of the complaint and submit a summary of its investigation to EOG.

Any entity issuing bonds for notaries public to submit an annual report to DOS to report whether any claims were paid and the circumstances under which those claims were paid. To ensure compliance with this provision, DOS may not accept bonding certificates from an entity that has failed to submit the required report until the required report is submitted.

This section of the bill also makes stylistic changes and deletes an outdated provision concerning an increase, on January 1, 1999, of the required bond amount for notaries public.

Section 2 amends s. 117.021, F.S., changing a reference to the Executive Office of the Governor to the Governor.

Section 3 amends s. 117.105, F.S., deleting an obsolete provision concerning rubber stamp type notary seals on documents and making stylistic changes.

Section 4 amends s. 117.103, F.S., making stylistic changes.

Section 5 amends s. 117.107, F.S., adding that notaries who violate this section with the intent to defraud are subject to suspension pursuant to s. 117.01, F.S., and making stylistic changes.

Section 6 amends s. 668.50, F.S., removing the notary education provision and making stylistic changes (this provision is transferred to s. 117.01, F.S.).

Section 7 provides for the type two transfer of powers and responsibilities, from the Executive Office of Governor to the Department of State.

Section 8 provides for a nonrecurring transfer of \$1.35 million from EOG to DOS to fund the processing of notary applications, education and assistance for notaries, and the investigation of complaints against notaries. The funds are transferred from the trust fund in EOG that the \$4 notary public application surcharges are deposited.

Section 9 provides for an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

DOS would incur costs associated with assuming the investigatory and education responsibilities from the EOG. However, these costs will be offset by the \$2.35 per notary application surcharge allocated to DOS. There would likewise be a reduction of revenues received and costs incurred in EOG.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic _____

Bill Number 7208
(if applicable)

Name Pierre Schuessler

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Director

Address 500 S. Bronough St
Street

Phone 245-6509

City _____ State _____ Zip _____

E-mail Pierre.Schuessler@dos.myflorida.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Department of State

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 (10/20/11)

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 Commerce and Tourism Committee

BILL: SPB 7210

INTRODUCER: For consideration by the Commerce and Tourism Committee

SUBJECT: Tipped Employees

DATE: February 6, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka		Pre-meeting
2.				
3.				
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I. Summary:

SPB 7210 creates an optional guaranteed wage for tipped employees in Florida. An employer may elect to guarantee tipped employers a certain wage for tipped employees who meet the eligibility requirements for the tip credit under the federal Fair Labor Standards Act. The election must remain in effect for 1 year from the date of the election and until revoked by the employer. An employer who makes such election does not have to pay the Florida minimum wage for tipped employees.

This bill creates general law not contained in a designated section of the Florida Statutes.

II. Present Situation:

Florida Minimum Wage

A constitutional amendment to Florida's Constitution took effect on May 2, 2005, which established the state minimum wage.¹ The Legislature enacted the Florida Minimum Wage Act in 2005 to implement the constitutional provisions.²

The Department of Economic Opportunity (DEO) is required to annually calculate and publish the state minimum wage.³ Current law requires employers to pay employees a minimum wage at an hourly rate published by DEO for all hours worked in Florida. Only those individuals entitled

¹ Section 24, Art. X, of the State Constitution.

² Chapter 2005-353, L.O.F.

³ "To implement s. 24, Art. X of the State Constitution, the Department of Economic Opportunity is designated as the state Agency for Workforce Innovation." s. 448.110(2), F.S.

to receive the federal minimum wage under the federal Fair Labor Standards Act and its implementing regulations are eligible to receive the state minimum wage.

Florida Minimum Wage Calculation

DEO must calculate an adjusted state minimum wage rate by increasing the state minimum wage by the rate of inflation for the 12 months prior to September 1. In calculating the adjusted state minimum wage, DEO must use the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for the South Region.⁴ Neither the statute nor the Constitution specifically addresses deflation in the computation of the minimum wage.

Currently, Florida's minimum wage is \$7.67 per hour.

Employers of *tipped employees*, who meet eligibility requirements for the tip credit under the Fair Labor Standards Act, may count tips actually received as wages under the Florida minimum wage. However, the employer must pay *tipped employees* a direct wage. The direct wage is calculated as equal to the minimum wage (\$7.67) minus the 2003 tip credit (\$3.02), or a direct hourly wage of \$4.65 as of January 1, 2012.⁵

Florida Compliance

Employees who are not paid the minimum wage may bring a civil action against the employer or any person violating Florida's minimum wage law. "Rights protected include, but are not limited to, the right to file a complaint or inform any person of his or her potential rights pursuant to s. 24, Art. X of the State Constitution and to assist him or her in asserting such rights."⁶ However, prior to bringing any claim for unpaid minimum wages, the person aggrieved shall notify the employer in writing of his or her intent to initiate such an action. An employer may ultimately be liable for unpaid wages, liquidated damages, and reasonable attorney's fees and costs to the employee.⁷ Such actions may also be class actions.⁸

The Attorney General may also bring an enforcement action to enforce the minimum wage, and may seek to impose a fine of \$1,000 per violation, payable to the state.⁹

Actions must be brought within 5 years of the date the alleged violation occurred.¹⁰

Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) prescribes standards for minimum wages, overtime pay, recordkeeping, and child labor.¹¹ It is administered by the U.S. Department of Labor, Wage and Hour Division. The current federal minimum wage is \$7.25 per hour. The required minimum

⁴ Section 448.110(4)(a), F.S.

⁵ See DEO's "Florida's Minimum Wage," available at http://www.floridajobs.org/minimumwage/Announcement-FL_MinWage2012.pdf (last visited 2/6/2012).

⁶ Section 448.110(5), F.S.

⁷ Section 448.110(6), F.S.

⁸ Section 448.110(9), F.S.

⁹ Section 448.110(7), F.S.

¹⁰ Section 448.110(8), F.S.

¹¹ 29 U.S.C. 201, et seq. See generally U.S. Department of Labor, Wage and Hour Division, "Compliance Assistance – Fair Labor Standards Act (FLSA)," available at <http://www.dol.gov/whd/flsa/index.htm> (last visited 2/6/2012).

cash wage for *tipped employees* is \$2.13 per hour; employers may take a tip credit of up to \$5.12 from the federal minimum wage.¹² There are additional notice requirements that employers must make to *tipped employees* in order to use the tip credit.

Employers electing to use the tip credit provision must be able to show that tipped employees receive at least the minimum wage when direct (or cash) wages and the tip credit amount are combined. If an employee's tips combined with the employer's direct (or cash) wages of at least \$2.13 per hour do not equal the minimum hourly wage of \$7.25 per hour, **the employer must make up the difference.**¹³

It is a violation of FLSA to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the FLSA.¹⁴

III. Effect of Proposed Changes:

SPB 7210 creates an optional guaranteed wage for tipped employees in Florida. An employer may elect to guarantee tipped employers a certain wage for tipped employees who meet the eligibility requirements for the tip credit under the federal Fair Labor Standards Act. Specifically, the wage must equal at least 130 percent of the state minimum wage, rounded up to the next cent.

The election must remain in effect for 1 year from the date of the election and until revoked by the employer. An employer who makes such election is deemed to have met the requirement to pay Florida tipped minimum wage.

The employer must make the election in writing, and post the dated election on the employer's premises in a conspicuous and accessible place.

An employer who fails to pay an employee the wage guaranteed in the notice or that engages in any discriminatory or retaliatory action against an employee exercising his or her rights under the Florida Constitution is subject to civil actions and fines provided in s. 448.110, F.S. Further, an employer must still meet the requirements of the federal Fair Labor Standards Act.

Section 2 provides an effective date of July 1, 2012.

¹² Under FLSA, tipped employees are those who customarily and regularly receive more than \$30 per month in tips. 15 U.S.C. 203(t).

¹³ U.S. Department of Labor, Wage and Hour Division, "Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA)" (revised March 2011), available at <http://www.dol.gov/whd/regs/compliance/whdfs15.pdf> (last visited 2/6/2012). Emphasis added.

¹⁴ U.S. Department of Labor, Wage and Hour Division, "Fact Sheet #77A: Prohibiting Retaliation Under the Fair Labor Standards Act (FLSA)" (revised December 2011), available at <http://www.dol.gov/whd/regs/compliance/whdfs77a.pdf> (last visited 2/6/2012).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 24(f), art. X, of the State Constitution, states that the provision “shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body to adopt or enforce any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits.” This bill guarantees a minimum wage for tipped employees that is 130 percent higher than the state minimum wage, and therefore may be permissible under the State Constitution if enacted by the Legislature.

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

None.

B. Private Sector Impact:

Tipped employees may benefit from a higher guaranteed minimum wage. Employers will benefit by being able to pay a lower direct cash wage to tipped employees, except in cases where the employer must make up the difference to reach the guaranteed minimum wage.

Effectively, for 2012, the guaranteed minimum wage under this bill would be about \$9.98 per hour.

C. Government Sector Impact:

Indeterminate. The Attorney General could experience additional complaints of wage violations under the provisions of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Employers who elect to pay the guaranteed minimum wage to tipped employees will also be required to make the appropriate payroll withholding for federal tax purposes.

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

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

None.

B. Amendments:

None.

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

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2.7.2012

Date

7210

Bill Number

Barcode

Name Carol Dover

Phone (850) 224.2250

Address 230 South Adams Street

E-mail cdover@

Street

Tallahassee

FL

32301

City

State

Zip

Job Title President - CEO

Speaking: ☒ For ☐ Against ☐ Information

Appearing at request of Chair ☐

Subject Tipped Employees

Representing Florida Restaurant and Lodging Association

Lobbyist registered with Legislature: ☒ Yes ☐ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

S-001 (04/14/10)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/7/12

Meeting Date

Topic Tipped Employees

Bill Number 7210
(if applicable)

Name Warren Husband

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 10909
Street

Phone (850) 205-9000

Tallahassee, FL 32302
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Fla. Restaurant & Lodging 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 (10/20/11)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2.7.2012

Date

7210

Bill Number

Barcode

Name Andrew Reiss

Phone (850) 222-3444

Address 228 South Adams Street

E-mail areiss@andrewsdowntown.com

Street

Tallahassee

FL

32301

City

State

Zip

Job Title Owner

Speaking:



For



Against



Information

Appearing at request of Chair ☐

Subject Tipped Employees

Representing Andrew's Capital Grill and Bar

Lobbyist registered with Legislature:



Yes



No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee:

Time:

from

____.m.

to

____.m.

S-001 (04/14/10)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/1/12
Meeting Date

Topic MINIMUM WAGE Bill Number 7210
Name JEFF SHARKEY (if applicable)
Job Title OWNER SHARKEY'S CAPITAL CAFE Amendment Barcode _____ (if applicable)
Address 106 E College Ave # 640 Phone 224-1600
Street City TALLAHASSEE State FL Zip 32301 E-mail JEFF@SHARKEYS.COM
Speaking: ☒ For ☐ Against ☒ Information
Representing SHARKEY'S CAPITAL CAFE
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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/7/12
Meeting Date

Topic Tipped Employees

Bill Number SPB 7210
(if applicable)

Name Brewster Bevis

Amendment Barcode _____
(if applicable)

Job Title VP - External Relations

Address 516 W Adams St
Street

Phone 850-224-7173

Tallahassee FL 32301
City State Zip

E-mail bbevis@airforce.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 1, 2012

Meeting Date

Topic Tipped Employees

Bill Number SB 7210
(if applicable)

Name Ryan West

Amendment Barcode _____
(if applicable)

Job Title Policy Director

Address 136 South Bronough Street
Street

Phone 850 821-1200

Tallahassee FL 32301
City State Zip

E-mail rwest@flchamber.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

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 Commerce and Tourism Committee

BILL: SB 1048

INTRODUCER: Senator Oelrich

SUBJECT: Innovation Incentive Program

DATE: February 6, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Philo	Hrdlicka	CM	Favorable
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

SB 1048 amends s. 288.1089, F.S., regarding the release of funds for the Innovation Incentive Program (IIP)

Without reference to the amount of an IIP award, s. 288.1089(7), F.S., currently requires the Governor to consult with the President of the Senate and the Speaker of the House of Representatives before approving the award and, upon review and approval by the Legislative Budget Commission (LBC), authorizes the Governor's Office to release the funds. The present bill amends the process based on the amount of an IIP award, as follows:

- If an award is over \$5 million, the Department of Economic Opportunity (DEO) may not release the funds until the award is reviewed and approved by the LBC;
- If an award is over \$2 million but not over \$5 million, at least 10 days before the funds are released, the Governor shall submit a description and evaluation of the award to the chair and vice chair of the LBC. If the chair or vice chair, the President of the Senate, or the Speaker of the House of Representatives timely advises the Governor that such action exceeds the Governor's delegated authority or is contrary to the legislative policy or intent, the Governor shall void the release of funds and instruct DEO to immediately change such action until the LBC or the Legislature addresses the issue; and
- If an award is not over \$2 million, the Governor may approve the award and DEO may release the funds without legislative notice or review.

This bill substantially amends s. 288.1089, F.S.

II. Present Situation:

Overview of the Innovation Incentive Program

The Legislature in 2006 established the Innovation Incentive Program (IIP) within the Department of Economic Opportunity (DEO, formerly the Office of Tourism, Trade, and Economic Development¹). The purpose of the IIP is “to ensure that sufficient resources are available to allow the state to respond expeditiously to extraordinary economic opportunities and to compete effectively for high-value research and development, innovation business, and alternative and renewable energy projects.”²

To be eligible for consideration for an IIP award, an innovation business,³ a research and development entity,⁴ or an alternative and renewable energy company⁵ must submit a written application to DEO before making a decision to locate new operations in the state or expand an existing operation in the state.⁶ The application must include, among other things, existing business information, projected operations (e.g., location, full-time equivalent jobs, average annual wage, project investment from all sources, etc.), and an explanation of why the IIP award is needed.⁷ To qualify for review by DEO, the applicant must establish that the jobs created by the project must pay an estimated annual wage equaling at least 130 percent of the average private sector wage, with certain exceptions.⁸ In addition, research and development projects must serve as a catalyst for an emerging or evolving technology cluster, demonstrate a plan for significant higher education collaboration, provide the state at least a break-even return on investment within a 20-year period, and be provided with a one-to-one match from the local community, with certain exceptions.⁹

¹ Ch. 2011-142, s. 4, L.O.F., transferred the functions and trust funds of the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor (OTTED) to DEO.

² Section 288.1089(1), F.S.

³ “Innovation business” is defined as “a business expanding or locating in this state that is likely to serve as a catalyst for the growth of an existing or emerging technology cluster or will significantly impact the regional economy in which it is to expand or locate.” Section 288.1089(2)(h), F.S.

⁴ “Research and development” is defined as “basic and applied research in the sciences or engineering, as well as the design, development, and testing of prototypes or processes of new or improved products. Research and development does not include market research, routine consumer product testing, sales research, research in the social sciences or psychology, nontechnological activities, or technical services.” Section 288.1089(2)(n), F.S. Moreover, “research and development facility” is defined as “a facility that is predominately engaged in research and development activities. For purposes of this paragraph, the term ‘predominately’ means at least 51 percent of the time.” Section 288.1089(2)(o), F.S.

⁵ “Alternative and renewable energy” is defined as “electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: ethanol, cellulosic ethanol, biobutanol, biodiesel, biomass, biogas, hydrogen fuel cells, ocean energy, hydrogen, solar, hydro, wind, or geothermal.” Section 288.1089(2)(a), F.S.

⁶ Section 288.1089(3), F.S. As part of its business recruitment efforts, Enterprise Florida, Inc. (EFI), identifies businesses that may be eligible to take advantage of this program.

⁷ Section 288.1089(3)(a)-(j), F.S.

⁸ Section 288.1089(4)(a), F.S.

⁹ Innovation businesses and alternative and renewable energy projects respectively have their own additional requirements (see s. 288.1089(4)(c)-(d), F.S.), but to date all funds have been awarded to research and development entities. DEO 2011 Annual Report, at 55 (Dec. 30, 2011) (available at <http://www.floridajobs.org/about%20awi/12.31.2011%20--%20DEO%20Annual%20Report%202012.pdf>).

These and many other relevant applicant criteria are comprehensively reviewed by DEO, the Department of Agriculture and Consumer Services, and Enterprise Florida, Inc (EFI).¹⁰ In negotiating the amount of an IIP award, DEO shall consider the amount of the incentive needed to cause the applicant to locate or expand in the state in conjunction with other relevant applicant impact and cost information and analysis. Particular emphasis shall be given to the potential for the project to stimulate additional private investment and high-quality employment opportunities.¹¹ In recommending approval of an award, DEO shall include proposed performance conditions that the applicant must meet in order to obtain incentive funds and any other conditions that must be met before the receipt of any incentive funds.¹²

Upon receipt of DEO's evaluation and recommendation, the Governor shall approve or deny an IIP award. Regardless of the amount of the award, the Governor shall consult with the President of the Senate and the Speaker of the House of Representatives before giving approval for an award. Upon review and approval by the Legislative Budget Commission (LBC), the Governor's Office shall release the funds.¹³

DEO and the applicant shall then enter into an agreement that sets forth the condition for payment of the incentive funds. The agreement must include, among other things, the total amount of funds awarded, performance conditions that must be met in order to obtain the award or portions of the award, demonstration of a baseline of current service and a measure of enhanced capability, the methodology for validating performance, and sanctions for failure to meet performance conditions.¹⁴ DEO as part of its annual report shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a summary of the activities and accomplishments of the recipients of IIP grants during the previous 12 months and an evaluation of whether the recipients are catalysts for additional direct and indirect economic development in Florida.¹⁵

DEO's 2011 Annual Report

In its 2011 Annual Report, DEO advises that since its inception in 2006, the IIP has awarded 8 entities a combined total of \$449.69 million, but that the actual payments to date total \$362.44 million, as the payments are based both on prior year results and projected current year needs.¹⁶

¹⁰ Section 288.1089(5), F.S. (incorporating s. 288.061, F.S.)

¹¹ Section 288.1089(6), F.S.

¹² Section 288.1089(7), F.S.

¹³ *Id.*

¹⁴ Section 288.1089(8), F.S.

¹⁵ Section 288.1089(11)(a), F.S.

¹⁶ The eight entities are: (1) Sanford-Burnham Medical Research Institute, (2) Torrey Pines Institute for Molecular Studies, (3) SRI International, (4) Human Institute for Human Genomics, (5) Max Planck Florida Corporation, (6) Vaccine Gene Therapy Institute Florida, (7) The Charles Stark Draper Laboratory, Inc., and (8) IRX Therapeutics, Inc. Detailed summaries of each are included in DEO's 2011 Annual Report, at 57-63. Note that the Scripps Research Institute and The Centers for Excellence Program were funded by legislation pre-dating the IIP, and therefore do not fall within its ambit. *See* The Florida Senate Interim Report 2009-107, Review of OTTED's Oversight of the Innovation Incentive Grant Program, at 1-2 (Oct. 2008) (available at http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-107cm.pdf).

The report sets forth the following chart indicating that the 8 entities are required to ultimately create a combined total of 1,771 jobs, with 748.15 of those jobs already in existence.¹⁷

Innovation Incentive Program Agreement Term and Award Information

In Thousands

	Sanford-Burnham Institute for Medical Research	Torrey Pines Institute for Molecular Studies	SRI Int'l	Hussman Institute for Human Genomics	Max Planck Florida Institute	Vaccine and Gene Therapy Institute of Florida	Draper Labs	IRX Therapeutics
Funding Agreement Effective Date	10/31/06	11/16/06	11/22/06	01/09/08	03/12/08	04/17/08	06/30/08	10/28/11
Funding Agreement Term	20 years	20 years	20 years	12 years	20 years	20 years	20 years	20 years
Total Amount Awarded	\$155,272	\$24,728	\$20,000	\$80,000	\$94,090	\$60,000	\$15,000	\$600
Current Amount Received as of 12/13/11	\$101,505	\$19,000	\$19,649	\$59,200	\$94,090	\$55,000	\$14,000	\$0
Total Jobs Required through Measurement Period	303 by 2016	189 by 2015	200 by 2016	296 by 2016	135 by 2018	200 by 2018	165 by 2015	283 by 2017
Current Jobs Actual	185.2 as of 09/11	104 as of 09/11	87.3 as of 09/11	199.65 as of 11/11	60 as of 09/11	62 as of 09/11	50 as of 09/11	N/A

DEO in its report also states that the IIP is in its first quarter of implementation,¹⁸ and that it is thus too early to definitively state that the IIP fund recipients are catalysts for additional direct and indirect economic development in Florida. DEO elaborates that the first IIP fund agreement in Florida was not executed until October 31, 2006, and that agreements are typically for 20 years, with job creation ramping up during the first 7 to 10 years.¹⁹

DEO nevertheless points to some early results reported by The Florida BioDatabase (maintained by the University of Florida's Sid Martin Biotechnology Incubator in Alachua) that Florida has seen a surge in investment and a 26 percent jump in the number of biotech companies since 2008, while the biotechnology industry has weakened across the United States. DEO quotes the editor of The Florida BioDatabase, Dr. Michael Schmitt, as saying in a news alert that Florida

¹⁷ DEO 2011 Annual Report, at 56. EFI includes similar data about IIP in its comprehensive 2011 Annual Incentives Report, at 14 (Table 3-Incentive Awards Granted—Grants); 19 (Table 7-Program Activity—Grants); 20 (Table 8-Program Results—Grants); 31 (Table 19-Incentive Applications and Projects—Fiscal Year 2011); 36 (Table 25-Incentive Payments—Fiscal Year 2011); and 56-61 (Table 41—Incentive Payments—Fiscal Year 2011). The report is available at http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf.

¹⁸ By “first quarter of implementation,” DEO appears to mean that about 5 years of the 20-year IIP agreement term (i.e., one quarter of the 20-year term) has elapsed since the first few IIP agreements in late 2006.

¹⁹ DEO 2011 Annual Report, at 63.

“has the key ingredients for growth including a strong research base and an increasing trend in venture capital funding.” It also cites Dr. Schmitt in confirming that:

- Florida is one of the nation’s top 10 biotech centers, according to Ernst & Young;
- Florida is one of the top five regions for biotech, according to Fierce Biotech;
- Florida has more than 171 biotech research and development companies, up 26 percent since 2008, resulting in more than 26,000 jobs for Floridians, including more than 4,000 researchers and technicians; and
- While PricewaterhouseCoopers LLP and the National Venture Capital Association showed marked decreases in venture capital funding for the life sciences sector, including biotechnology and medical devices, Florida’s trend is positive; venture capital funding for Florida went from \$27 million in 2010 to \$61 million through the third quarter of 2011.²⁰

Comparison With the Quick Action Closing Fund

The Quick Action Closing Fund (QACF) is a similar incentive program with a separate but related focus of ensuring that sufficient resources shall be available for the state to respond to extraordinary economic opportunities and to compete effectively for high impact business facilities, critical private infrastructure in rural areas, and key businesses in economically distressed urban or rural communities, with up to 20 percent of the resources allowed to be used for projects to retain or create high-technology jobs that are directly associated with developing a more diverse aerospace economy in the state.²¹ The criteria and application process for the QACF are analogous to those of the IIP,²² and the QACF used to have a somewhat similar procedure for approval by the Governor.

Specifically, back in 2010, the Governor was required to provide the Office of Tourism, Trade, and Economic Development’s (OTTED, now DEO) evaluation of QACF projects recommended for approval to the President of the Senate and the Speaker of the House of Representatives, and consult with them before giving final approval for a project. At least 14 days before releasing funds for the project, the Governor’s Office was required to recommend approval of the project and release of funds by delivering notice of such action pursuant to legislative consultation and review requirements regarding appropriations under s. 216.177, F.S. If the chair or vice chair of the LBC or the President of the Senate or the Speaker of the House of Representatives timely advised the Governor’s Office that such action exceeded the delegated authority of the Governor’s Office or was contrary to legislative policy or intent, the Governor’s Office was required to void the release of funds and instruct OTTED (now DEO) to immediately change such action until the LBC or the Legislature addressed the issue. Notwithstanding such requirement, any project exceeding \$2 million had to be approved by the LBC prior to the funds being released.²³

Significantly, however, the Legislature in 2011 amended this process for the QACF as follows:

²⁰ *Id.* For a history, status, review, and recommendations regarding the IIP as of October 2008, *see* The Florida Senate Interim Report 2009-107, Review of OTTED’s Oversight of the Innovation Incentive Grant Program.

²¹ Section 288.1088(1)(c), F.S.

²² *Compare* s. 288.1088(2)-(3), F.S. (criteria and application process for the QACF), *with* s. 288.1089(3)-(7), F.S. (criteria and application process for the IIP).

²³ Section 288.1088(3)(c), F.S. (2010).

- The Governor may now approve QACF projects without consulting the Legislature for projects requiring less than \$2 million in funding;
- For projects requiring funding in the amount of \$2 million to \$5 million, the Governor is now required to provide a written description and evaluation of a QACF project recommended for approval to the chair and vice chair of the LBC at least 10 days prior to giving final approval for a project. The Governor is no longer required to provide the evaluation to the President of the Senate and the Speaker of the House of Representatives, nor is the Governor required to comply with the legislative consultation and review requirements regarding appropriations under s. 216.177, F.S. The requirement remains that if the chair or vice chair of the LBC or the President of the Senate or the Speaker of the House of Representatives timely advises the Governor's Office that the action at issue exceeds the delegated authority of the Governor's Office or is contrary to legislative policy or intent, the Governor's Office is required to void the release of funds and instruct DEO to immediately change such action until the LBC or the Legislature addresses the issue; and
- Notwithstanding such requirement, any project exceeding \$5 million (as opposed to \$2 million) must be approved by the LBC Commission prior to the funds being released.²⁴

III. Effect of Proposed Changes:

SB 1048 amends s. 288.1089, F.S., regarding the IIP.

Section 1: Without reference to the amount of an IIP award, s. 288.1089(7), F.S., currently requires the Governor to consult with the President of the Senate and the Speaker of the House of Representatives before approving the award and, upon review and approval by the Legislative Budget Commission (LBC), authorizes the Governor's Office to release the funds. Much like last year's amendments to the QACF, the present bill amends the IIP process based on the amount of the award, as follows:

- If an award is over \$5 million, DEO may not release the funds until the award is reviewed and approved by the LBC;
- If an award is over \$2 million but not over \$5 million, at least 10 days before the funds are released, the Governor shall submit a written description and evaluation of the award to the chair and vice chair of the LBC. If the chair or vice chair, the President of the Senate, or the Speaker of the House of Representatives timely advises the Governor's Office in writing that such action or proposed action exceeds the delegated authority of the Governor's Office or is contrary to the legislative policy or intent, the Governor's Office shall void the release of funds and instruct DEO to immediately change such action or proposed action until the LBC or the Legislature addresses the issue; and
- If an award is not over \$2 million, the Governor may approve the award and DEO may release the funds without legislative notice or review.

The bill also updates a reference to OTTED.²⁵

²⁴ Ch. 2011-142, s. 154, L.O.F. For the corresponding staff analysis, see Bill Analysis and Fiscal Impact Statement on SB 2156 (April 2, 2011), at 6 & 23 (available at <http://www.flsenate.gov/Session/Bill/2011/2156/Analyses/gd=PL=dOKcIWTjGtHd2Osc6XNkw7mU=%7C7/Public/Bills/2100-2199/2156/Analysis/2011s2156.bc.PDF>). Ch. 2011-142, s. 18, L.O.F., also amended s. 288.061, F.S., regarding the general review and approval process for applications by businesses seeking state economic incentives. For the corresponding staff analysis, see Bill Analysis on SB 2156, at 18.

Section 2: The bill provides for an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill requires the Governor to submit a written description and evaluation of in IIP award to the chair and vice chair of the LBC, but not to the President of the Senate and the Speaker of the House of Representatives. Yet all four of those people are authorized to timely advise the Governor's Office that the action at issue exceeds the delegated authority of the Governor's Office or is contrary to legislative policy or intent. In order to effectively so advise the Governor, it would seem that the President of the Senate and the Speaker of the House of Representatives (not just the chair and vice chair of the LBC) would likewise need to receive the written description and evaluation of an IIP award.

VII. Related Issues:

EFI submits that the changes at issue will provide a quicker, more market reactive incentive approval process; increased ability to attract high-wage, innovative jobs to the state; a sharpened competitive edge for Florida through a more level playing field with its regional and national

²⁵ Ch. 2011-142, s. 4, L.O.F., transferred the functions and trust funds of OTTED in the Executive Office of the Governor to DEO.

competitors; and a more efficient utilization of a key incentive tool. In identifying the present bill as a legislative priority, EFI elaborates:

As economic conditions have changed so too have the economic development needs of businesses. More businesses qualifying for an Innovation Incentive award are only in need of a small amount of capital to offset expenditures in order to grow and create jobs. Not only is the incentive award important to a business but the speed and certainty of the timeline is crucial.

During the early use of the program, larger amounts of money were usually awarded and it was fiscally prudent of the state for the LBC to review and provide final approval [for] all awards before they were granted. Now that smaller awards are needed in a shorter time frame it is imperative that the approval process reflect that. Therefore, EFI recommends updating the Innovation Incentive Approval Process to mirror the process for the Quick Action Closing Fund.²⁶

VIII. Additional Information:

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

None.

B. Amendments:

None.

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

²⁶ Informational sheet titled "Enterprise Florida 2012 Legislative Priorities, Update the Innovation Incentive Approval Process" (on file with the Senate Committee on Commerce and Tourism).



The Florida Senate

Committee Agenda Request

RECEIVED

JAN 10 2012

COMMERCE

To: Senator Nancy C. Detert, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 10, 2012

I respectfully request that **Senate Bill # 1048**, relating to Innovation Incentive Program, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

A handwritten signature in cursive script that reads "Steve Oelrich".

Senator Steve Oelrich
Florida Senate, District 14

posted 1/10/12
psb

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-7-12
Meeting Date

Topic INNOVATION INCENTIVE PROGRAM

Bill Number SB 1048
(if applicable)

Name Amy Evancho

Amendment Barcode _____
(if applicable)

Job Title President & CEO

Address 3802 Spectrum Blvd; Suite 141
Street
Tampa FL 33612
City State Zip

Phone 813-977-3332

E-mail aevancho@fedc.net

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Economic Development Council

WAIVES IN SUPPORT

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 (10/20/11)

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 Commerce and Tourism Committee

BILL: SB 438

INTRODUCER: Senator Bennett

SUBJECT: Consumer Finance Charges

DATE: February 6, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	Favorable
2.	Philo	Hrdlicka	CM	Favorable
3.			BC	
4.				
5.				
6.				

I. Summary:

Chapter 516, F.S., the Florida Consumer Finance Act (act), defines “consumer finance loan” as a loan of money, credit, goods, or provision of a line of credit, in an amount or to a value of \$25,000 or less at an interest rate greater than 18 percent per annum. The allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan. As the principal amount increases, the allowable interest rate decreases, as follows:

- \$1 - \$2,000 principal, up to 30 percent allowable interest;
- \$2,001 - \$3,000 principal, up to 24 percent allowable interest;
- \$3,001 - \$25,000 principal, up to 18 percent allowable interest.

The bill increases by \$1,000 the principal amount that would be subject to the maximum amount of interest that is allowed to be charged within each tier. The bill increases from \$10 to \$15, the maximum amount that can be charged to a borrower for making a payment that is in default for at least 10 days.

The bill conforms the fees that can be charged for worthless checks to the amounts permissible under s. 68.065, F.S.

This bill substantially amends ss. 516.031 and 516.19, F.S.

II. Present Situation:

Under ch. 516, F.S., the Florida Consumer Finance Act (act), the Office of Financial Regulation (OFR) licenses entities that issue consumer finance loans.¹ The license fees under the act are \$625 for the initial application, plus a \$200 investigation fee, and \$625 for a renewal.² A license is valid for not more than 2 years.³ Under the requirements a licensee must maintain evidence of liquid assets of at least \$25,000.⁴ The OFR is authorized to examine and investigate any licensee, and take disciplinary actions against licensees violating the act.⁵ As of October 20, 2011, there were 301 licensed locations in Florida.⁶

Under the act, interest rates on consumer finance loans are tiered and limited based on the principal amount subject to each tier of the loan:

- For principal amounts up to \$2,000, maximum interest rate of 30 percent per annum;
- For principal amounts between \$2,001 and \$3,000, maximum interest rate of 24 percent per annum;
- For principal amounts between \$3,001 and \$25,000, maximum interest rate of 18 percent per annum.⁷

The principal amounts upon which interest rates are computed were last addressed by the Legislature in 1997.⁸

Additionally, the act allows a lender to charge a delinquency fee of up to \$10 for each payment that is in default for at least 10 days. Under the act the delinquency fee must first be agreed upon in writing by both parties.⁹ The delinquency fee was last addressed by the Legislature in 2000.¹⁰

Under the act, lenders are also permitted to impose a bad check charge of no more than \$20, or the actual fee charged to the lender by a depository institution for the return of the unpaid or dishonored instrument.¹¹ The last time the bad check fee was addressed by the Legislature was in 1994.¹²

¹ Section 516.01(2), F.S., defines “consumer finance loan” as a loan of money, credit, goods, or provision of a line of credit, in an amount or to a value of \$25,000 or less at an interest rate greater than 18 percent per annum.

² Section 516.03(1), F.S.

³ Section 516.05(1), F.S.

⁴ Sections 516.03(1) and 516.07(1)(b), F.S.

⁵ Sections 516.05-516.11, F.S.

⁶ OFR, *Analysis of HB 275 by Representative Burgin* (Nov. 7, 2011), at 2 (on file with the Senate Committee on Commerce and Tourism).

⁷ Section 516.031(1), F.S.

⁸ Chapter 97-181, s. 1, L.O.F.

⁹ Section 516.031(3)(a)9., F.S.

¹⁰ Chapter 2000-127, s. 1, L.O.F.

¹¹ Section 516.031(3)(b), F.S.

¹² Chapter 94-108, s. 1, L.O.F.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 516.031, F.S., to increase by \$1,000 the principal amount that would be subject to the maximum amount of interest that is allowed to be charged for each principal tier:

<u>Interest Rate</u>	<u>Current Law</u>	<u>Senate Bill 438</u>
30% per annum	Principal \$1 - \$2,000	Principal \$1 - 3,000
24% per annum	Principal >\$2,000 - \$3,000	Principal >\$3,000 - 4,000
18% per annum	Principal >\$3,000 - 25,000	Principal >\$4,000 - 25,000

The bill also increases from \$10 to \$15, the maximum amount that can be charged for a payment in default for at least 10 days, and keeps the requirement that both parties must first agree in writing to the delinquency fee.

The bill also increases the maximum permissible bad check charge and places it on a sliding scale consistent with existing maximum worthless check service charges applicable in civil actions¹³ and the state attorney bad check diversion program.¹⁴ The new bad check charge will be: \$25, if the face value does not exceed \$50; \$30, if the face value exceeds \$50 but does not exceed \$300; \$40, if the face value exceeds \$300; or, 5 percent of the face amount of the check, whichever is greater.

Section 2 of the bill reenacts and grammatically amends s. 516.19, F.S., to provide that any person who violates any of the subject provisions “commits” (as opposed to “is guilty of”) a first-degree misdemeanor.

Section 3 of the bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ Section 68.065(2), F.S.

¹⁴ Section 832.08(5), F.S.

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

None.

B. Private Sector Impact:

Consumers who borrow will be subject to an additional 6 percent of annual interest on up to \$1,000 on monies borrowed above \$2,000 and another 6 percent of annual interest on up to \$1,000 on monies borrowed above \$3,000. Using a national company's average loan amount reported by the Florida Financial Services Association, for an amortized loan of \$3,400, the impact of the proposed increases would be as follows:¹⁵

<u>Amortization Period</u>	<u>Interest Under Current Law</u>	<u>Interest Under SB 438</u>	<u>Amount of Interest Increase</u>
6 Months	\$288.00	\$301.50	\$13.50
12 Months	\$549.50	\$574.34	\$24.84
24 Months	\$1,102.45	\$1,156.41	\$53.96

Borrowers who default on a payment will be subject to an additional \$5 in charges for each defaulted payment.

Borrowers who issue bad checks as payment to a lender will be subject to additional fees consistent with existing maximum bad check service charges: \$25, if the face value does not exceed \$50; \$30, if the face value exceeds \$50 but does not exceed \$300; \$40, if the face value exceeds \$300; or, 5 percent of the face amount of the check, whichever is greater.¹⁶

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁵ Memoranda to Florida House of Representatives Insurance and Banking Subcommittee from Legislative Consultants James H. Thompson and Joseph S. Shuler (Nov. 8 & 14, 2011), and OFR, *Chart: Recap of Interest Accrual Calculations* (all on file with the Senate Committee on Commerce and Tourism).

¹⁶ OFR Bill Analysis, at 2.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Chair*
Banking and Insurance
Budget - Subcommittee on Criminal and Civil Justice
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Criminal Justice
Military Affairs, Space, and Domestic Security

SENATOR MICHAEL S. "MIKE" BENNETT

President Pro Tempore
21st District

January 11, 2012

The Honorable Nancy Detert
Chair, Commerce Committee
310 Knott Building
404 S. Monroe St.
Tallahassee, FL 32399

Dear Chairman Detert:

I am requesting that you place S438, Consumer Finance Charges, on your committee agenda as soon as possible.

If you have any questions, please let me know. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Bennett".

Michael S. "Mike" Bennett
/cre

Cc: Jennifer Hrdlicka, Staff Director
Patty Blackburn Administrative Assistant
Charlie Anderson

posted 1/11/12
psh

REPLY TO:

- ☐ Wildewood Professional Park, Suite 90, 3653 Cortez Road West, Bradenton, Florida 34210 (941) 727-6349
- ☐ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5078

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/7/11
Meeting Date

Topic CONSUMER FINANCE

Bill Number 438
(if applicable)

Name JAMES HAROLD THOMPSON

Amendment Barcode _____
(if applicable)

Job Title AUSLEY FIRM

Address 123 S. CALHOUN ST.
Street

Phone 224-9115

TALLAHASSEE, 32301
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA FINANCIAL SERVICES ASSOC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

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 Communications, Energy, and Public Utilities Committee

BILL: SB 1242

INTRODUCER: Senator Hays

SUBJECT: Broadband Internet Service

DATE: February 6, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	Favorable
2.	Juliachs	Hrdlicka	CM	Favorable
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill designates the Department of Economic Opportunity (DEO) to replace the Department of Management Services (DMS) as the agency responsible for implementing the state's broadband program, and designating DEO as the single state entity to receive and manage all federal State Broadband Initiative funds. The bill also:

- Requires DEO to establish a public-private partnership that will collaboratively perform the work of implementing the broadband program.
- Requires that DEO's strategic plan to increase use of broadband Internet service in Florida be developed with the use of consumer research into residential and business technology utilization data.
- Requires that broadband mapping be developed at the census block level of detail.

The bill substantially amends s. 364.0135 F.S.

II. Present Situation:

In 2008, Congress passed the Broadband Data Improvement Act (BDIA)¹ to improve the quality of federal and state data concerning the availability and quality of broadband services for the purpose of promoting the deployment of affordable broadband services to all parts of the nation. In early 2009, Congress directed the Federal Communications Commission (FCC) to develop a National Broadband Plan to ensure every American has access to broadband capability. Congress also required that this plan include a detailed strategy for achieving affordability and maximizing

¹ Broadband Data Improvement Act, Pub. L. No. 110-385.

the use of broadband to advance “consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, employee training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.”² The plan developed by the FCC can be found at <http://www.broadband.gov/plan/>.

The American Recovery and Reinvestment Act of 2009 (ARRA)³ provided \$7.2 billion in funding for the purpose of developing and expanding broadband services to rural and underserved communities with a focus on schools, libraries, health care, educational institutions, non-profit community organizations, and the construction of broadband infrastructure. Two federal agencies are handling the distribution of broadband grants/awards through an application process.

The U.S. Department of Agriculture Rural Utilities Service (RUS) was authorized to make loans and grants totaling \$2.5 billion for broadband infrastructure projects in rural areas through its Broadband Initiatives Program (BIP).⁴ Likewise, the U.S. Department of Commerce National Telecommunications Information Administration (NTIA) was authorized to provide grants totaling \$4.7 billion to fund comprehensive broadband infrastructure projects, public computer centers, and sustainable broadband adoption projects through its Broadband Technology Opportunities Program (BTOP).⁵

In 2009, the Legislature enacted s. 364.0135, F.S., for the promotion of broadband. Currently, the statute authorizes the Florida Department of Management Services (DMS) to work collaboratively with Enterprise Florida, Inc. (EFI), state agencies, local governments, private businesses, and community organizations to:

- Monitor the development of broadband Internet service and develop data and maps that provide a baseline assessment of the availability and speed of broadband service throughout Florida;
- Create a strategic plan to increase use of broadband Internet service in Florida;
- Build and facilitate local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture; and
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs.

DMS was also authorized to apply for and accept federal funds, gifts, and donations from individuals, foundations, and private organizations for these purposes.⁶

² Information available at: <http://www.broadband.gov/plan/executive-summary/> (last visited February 3, 2012).

³ The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.

⁴ Information available at: <http://www.broadbandusa.gov/BIPportal/index.htm> (last visited February 3, 2012).

⁵ Information available at: <http://www2.ntia.doc.gov/> (last visited February 3, 2012).

⁶ In 2011, the Legislature amended s. 364.0135, F.S., to modify the intent of the program to one that promotes a sustainable adoption of broadband internet service. Sustainable adoption was defined to mean the ability for communication service providers to offer broadband services in all areas of the state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy. As such, the statute was also

That same year NTIA launched the State Broadband Initiative (SBI) to implement the purposes of the ARRA and the Broadband Data Improvement Act. According to the NTIA's website,⁷ 12 separate entities within Florida have been awarded a combined total of \$183.7 million for broadband infrastructure, sustainable adoption, and public computer center projects.⁸ A table listing statewide federal award disbursements is provided below:

Grantee	Total Award	Type
City of Tallahassee	\$1,212,020	Sustainable Adoption
Communication Service for the Deaf, Inc.	\$14,988,657	Sustainable Adoption
Florida A&M University	\$1,477,722	Public Computer Centers
Florida Department of Management Services	\$8,877,028	Broadband Data & Development⁹
Florida Rural Broadband Alliance	\$23,693,665	Infrastructure
Level 3 EON, LLC	\$2,066,250	Infrastructure
North Florida Broadband Authority	\$30,142,676	Infrastructure
One Community	\$18,701,771	Sustainable Adoption
One Economy Corporation	\$28,519,482	Sustainable Adoption
School Board of Miami-Dade	\$3,473,498	Sustainable Adoption
Tampa Housing Authority	\$2,131,322	Sustainable Adoption
University Corporation for Advanced Internet Development	\$62,540,162	Infrastructure

As noted above, among those awards, DMS was awarded a total of \$8,877,028¹⁰ for the following purposes:

- Provide technical assistance to Florida anchor institutions for the E-rate program for increasing school and library telecommunications funding to procure services and technology from the private sector;
- Develop regional planning teams, in partnership with the Florida Regional Planning Councils, to assist in local and regional broadband planning;

amended to require that DMS monitor the adoption of broadband Internet service as opposed to simply conduct a needs assessment statewide. *See* ch. 2011-36, L.O.F; *See also* Analysis for CS/CS/HB 1231 BY House State Affairs Committee (April 14, 2011).

⁷ Information available at: <http://www2.ntia.doc.gov/SBDD> (last visited February 3, 2012).

⁸ Information available at: <http://www2.ntia.doc.gov/florida> (last visited February 3, 2012).

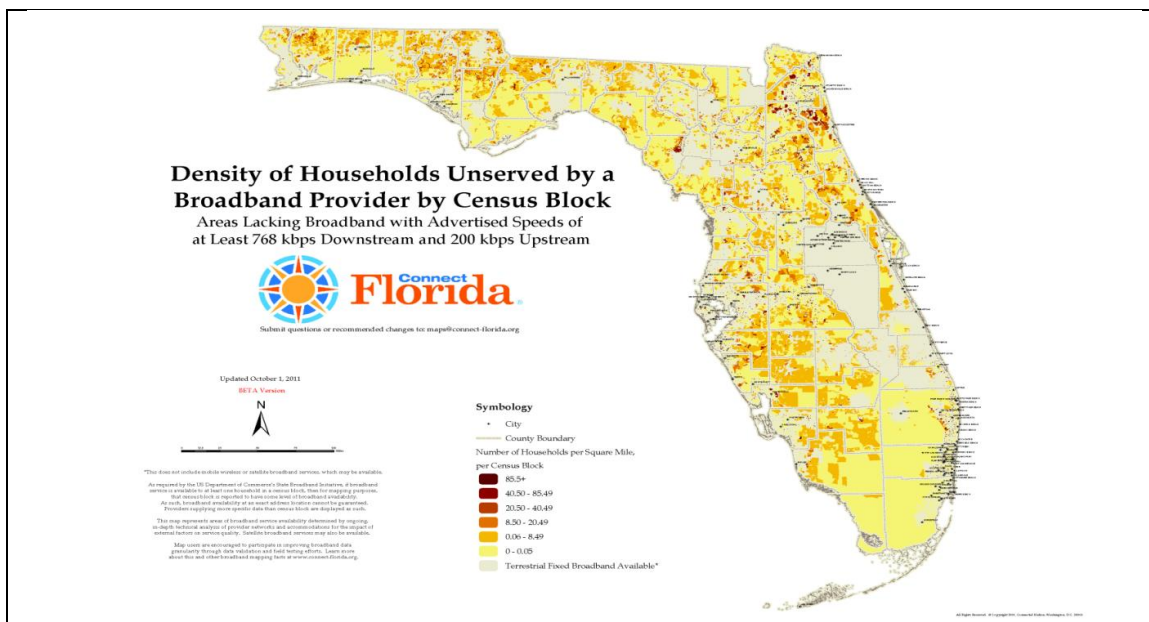
⁹ Note that this amount is derived from the SBI fund. To date, NTIA has awarded a total of \$293 million to 56 grantees, one each from the 50 states, 5 territories, and the District of Columbia, or their designees from this fund. All other awards reflected in this chart derive from either the BTOP or BIP funds, which are administered respectively by the U.S. Department of Agriculture's Rural Utilities Services and U.S. Department of Commerce.

¹⁰ Information available at: <http://www2.ntia.doc.gov/grantee/florida-department-of-management-services> (last visited February 3, 2012). According to DMS, it also developed and applied for a broadband adoption grant under the BTOP on two occasions using a "community development" model proposed by Connected Nation, *infra* note 11, though both applications, along with applications from other states proposing similar programs, were denied.

- Provide further funding opportunity development and assistance to anchor institutions to secure additional funding to expand broadband usage throughout the state from the private sector;
- Provide for broadband data inventory, analysis and mapping; and
- Provide technology assessments to libraries for the purpose of increasing funding to purchase broadband from the private sector.

With some of the funds provided through ARRA, DMS partnered with a national organization called Connected Nation¹¹ to map landline and wireless broadband services using information from service providers and other sources. This mapping project is intended to better identify the location of Florida's unserved and underserved areas.¹²

Provided below is a map that highlights the density of households unserved by a broadband provider by census block. To assist with interpreting the data, the burgundy marks on the map represent the *greatest* density of households that are unserved by broadband while the light yellow markings reflect the *lowest* density of households that are unserved by a broadband provider. In other words, the light yellow markings reflect the greatest density of households that are served by a broadband provider.



Department of Economic Opportunity

In 2011, the Legislature created the Department of Economic Opportunity (DEO) “to assist the Governor in working with the Legislature, state agencies, business leaders, and economic

¹¹ Connected Nation is a nonprofit corporation whose Board of Directors is represented by CTIA-The Wireless Association, the Telecommunications Industry Association, the American Farm Bureau Federation, The Children's Partnership, and Intel. Its work is directed by the board and a National Advisory Council comprised of a number of telecommunications companies and industry organizations, technology companies, and nonprofit organizations. The full list of members can be found at http://connectednation.org/who_we_are/national_advisors/ (last visited February 3, 2012)

¹² The efforts of this project can be found at <http://www.connect-florida.org/> (last visited February 3, 2012).

development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians.”¹³ As such, DEO is charged with the following duties:

- Facilitating the direct involvement of the Governor and the Lieutenant Governor in economic development and workforce development projects designed to create, expand, and retain businesses in this state; recruit business from around the world; and facilitate other job-creating efforts;
- Recruiting new businesses to this state and promoting the expansion of existing businesses by expediting permitting and location decisions, worker placement and training, as well as incentive awards;
- Promoting viable, sustainable communities by providing technical assistance and guidance on growth and development issues, grants, and other assistance to local communities;
- Ensuring that the state’s goals and policies relating to economic development, workforce development, community planning and development, and affordable housing are fully integrated with appropriate implementation strategies; and
- Managing the activities of public-private partnerships and state agencies in order to avoid duplication and promote coordinated and consistent implementation of programs in areas including, but not limited to, tourism; international trade and investment; business recruitment, creation, retention, and expansion; minority and small business development; rural community development; commercialization of products, services, or ideas developed in public universities or other public institutions; and the development and promotion of professional and amateur sporting events.¹⁴

III. Effect of Proposed Changes:

Section 1 amends s. 364.0135, F.S., to designate DEO as the agency responsible for receiving and managing federal funds from the U.S. Department of Commerce for state broadband initiatives

This bill also requires DEO to establish a public-private partnership that will work collaboratively with, and receive staffing support and other resources from EFI, state agencies, local governments, private businesses, not-for-profit organizations, and community organizations. Further, DEO is charged with the task of creating a strategic plan, developed through the use of consumer research and residential and business technology utilization data, for the purpose of increasing the use of broadband Internet service in the state.

Finally, this bill specifies that broadband mapping be conducted at the census block level of detail. Current law provides that these areas be identified at the census tract level. The effect of this change will require mapping at a higher level of detail.

Section 2 provides that this bill will take effect July 1, 2012.

¹³ See ch. 2011-142, L.O.F.

¹⁴ Section, 20.60(4), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:¹⁵

According to DMS, there could be losses in the amount of \$630,889 to contractors who provide broadband inventory and mapping services if the transfer of grant awards is not approved.

C. Government Sector Impact:¹⁶

According to DMS, local governments could incur a potential loss in the amount of \$502,000 through broadband planning with regional planning councils, loss of increased E-Rate funds for schools and libraries, and loss of federal foundation funds without grants if the transfer of grant awards is not approved.

Additionally, transfer of these awards to a new entity would require approval by the SBI to continue the grants.¹⁷ As per DMS, SBI has approved two transfers, and the process required significant work and lead time for the existing grantee, new grantee, and the SBI office. DMS also indicates that, to achieve approval of such a transfer, the grant award must be transferred in its entirety to the new entity, and the new entity must continue the same work as set forth in the original award. According to DMS, this means that the programs and budgets must remain the same and the staff must remain whole or substantially intact.

¹⁵ See Analysis for SB 1242 by Department of Management Services (January 6, 2012) (on file with the Senate Committee on Commerce and Tourism).

¹⁶ *Id.*

¹⁷ See U.S. Department of Commerce Grants Manual, Chapter 16, W., *Transfer of Award*, available at http://www.osc.doc.gov/oam/grants_management/policy/doc_grants_manual/default.htm (last visited February 3, 2012).

However, Connected Nation provided information that in two states where it has been involved in such a transfer, Alaska and Kansas, the transfer was accomplished by a simple, one-page letter from the governor to The Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, United States Department of Commerce.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to DEO, the bill does not provide for the transfer of positions and funds from the Department of Management Services; however, DEO will need such resources to administer the state broadband program in accordance with federal grant requirements.¹⁹

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

¹⁸ Copies of letters are on file with Senate Committee on Commerce and Tourism (February 3, 2012).

¹⁹ See Analysis for SB 1242 by Department of Economic Opportunity (January 17, 2012) (on file with the Senate Committee on Commerce and Tourism).



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Budget - Subcommittee on General Government
Appropriations, *Chair*
Agriculture
Banking and Insurance
Budget
Budget - Subcommittee on Higher Education
Appropriations
Criminal Justice
Reapportionment

JOINT COMMITTEE:
Administrative Procedures

SENATOR D. ALAN HAYS
20th District

January 23, 2012

RECEIVED
JAN 23 2012
COMMERCE

Senator Nancy C. Detert, Chair
Committee on Commerce and Tourism
318 Senate Office Building
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

RE: SB 1242 Relating to Broadband Internet Service

Dear Chair Detert:

I respectfully request my above bill be heard before your committee. I feel this bill would benefit the citizens of this state.

Thank you in advance for your consideration, and please contact me if you have any questions.

Sincerely,

D. Alan Hays, DMD
State Senator
District 20

CC: **Jennifer Hrdlicka**, *Staff Director*
Patty Blackburn, *Committee Administrative Assistant*

posted 1/23/12
psh

REPLY TO:

- ☐ 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- ☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/7/12

Meeting Date

Topic BROAD BAND

Bill Number 1242
(if applicable)

Name SLATEL BAYLISS

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S MONROE ST #602
Street

Phone 850 222 8900

TALLAHASSEE FL 32301
City State Zip

E-mail swb@cardenaspartners.com

Speaking: ☒ For ☐ Against ☐ Information

Representing CONNECT NATION DEVELOPMENT CO

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/7/2012
~~1242~~

Meeting Date

Topic BROADBAND

Bill Number 1242
(if applicable)

Name GAIL MARIE FERRY

Amendment Barcode _____
(if applicable)

Job Title CHAIR

Address PO BOX 1766

Phone 954/850 4053

Pompano Beach FLA 33061
City State Zip

E-mail workingfolk@hotmail.com

Speaking: ☒ For ☐ Against ☐ Information

COUNCIL OF FLORIDA

Representing COMMUNICATIONS WORKERS OF AMERICA

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 (10/20/11)

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 Commerce and Tourism Committee

BILL: CS/SB 946

INTRODUCER: Commerce and Tourism Committee and Senator Bennett

SUBJECT: Economic Development

DATE: February 7, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	Fav/CS
2.			EP	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 946 deals with the creation of a statewide golf trail. Specifically, this CS authorizes Enterprise Florida, Inc., to establish a statewide golf trail; designate a proprietary name used for the promotion of the statewide golf trail; and enter into licensing agreements or contracts with golf courses, tourism promotion agencies, and other golf industry businesses. Enterprise Florida Inc., is also required to submit an annual report by February 1 of each year to the President of the Senate and the Speaker of the House of Representatives on the progress and success of the statewide golf trail.

Lastly, this CS encourages the donation of golf course property to the state, a local government, or a nonprofit organization for certain public uses. Such property may be exempt from ad valorem taxation under ss. 196.192 or 196.199, F.S.

This CS amends s. 288.11685, F.S.

This CS creates s. 196.2003, F.S.

II. Present Situation:

Florida Golf Industry¹

Florida's golf industry contributes significantly to the state's economy. As of 2007, Florida boasted 1,128 courses, 75 standalone ranges, 84 miniature golf facilities, and 605 golf communities, which generated an estimated \$3.4 billion of revenues in the state. Both the presence of several of the major golf association's headquarters in the state, as well as the fact Florida hosts a high number of many of the major golf championships, are contributing factors when explaining the steady stream of revenue that the golf industry brings to the state. To this end, one report concluded that "Florida's golf facilities generated revenues comparable to all other spectator sports in the state combined, including auto and horse racing, football, basketball, and baseball."

When discussing the golf industry's contributions to the state's economy, it is useful to consider golf's core and enabled industries. Core industries refer to the golf facilities themselves and with those "other core industries that produce goods and services used to operate facilities and to play the game: golf equipment and golf apparel manufacturers, golf course architects and course builders, turf maintenance equipment and service providers, and club management services." The second group, enabled industries, refers to the impact that the golf industry has on other industries, such as tourism and real estate. Combining these two categories together, Florida's golf economy is approximately \$7.5 billion. Provided below is a chart summarizing size of the Florida's golf economy that is itemized at both the core and enabled industry level.

Size of Florida's Golf Economy in 2007 by Segment (\$ million)	
Core Industries	
Golf Facility Operations	\$3,449.4
Golf Course Construction and Capital Investment	\$352.9
Golf Related Supplies (retail margin and manufacturing exports)	\$206.1
Major Golf Tournaments and Associations	\$377.0
TOTAL CORE INDUSTRIES	\$4,385.4
Enabled Industries	
Real Estate	\$1,382.4
Hospitality/Tourism	\$1,705.1
Total Enabled Industries	\$3,087.5
TOTAL GOLF ECONOMY	\$7,472.9

¹ The information contained in this section derives from the following August 2009 publication: *The Florida Golf Economy: Full Report*. This report was commissioned by GOLF 20/20 for the Florida Golf Impact Task Force and prepared by SRI International. It is available at: http://golf2020.com/media/12459/economicimpact_fl_golf_full_report_final_7.pdf (last visited February 5, 2012).

With respect to the first category, core industries, the term broadly includes both capital investments and golf-related suppliers. Investments into golf facilities provide opportunities for upgrading, renovating, and expanding existing facilities, as well as the development of new facilities. In 2007, Florida's golf facilities made \$352.9 million worth in capital investments, creating employment in construction and other industries. Likewise, the presence of golf-related suppliers and manufacturers has also benefited the state's economy.² This sector contributed \$206.1 million in revenues, with Florida manufacturers' total value-added shipment of golf-related products at approximately \$28.5 million and golf retailers and facilities earning approximately \$177.6 million from the sale of golf equipment, apparel, and media.

Tourism and real estate have also profited directly from Florida's golf economy. In 2007, while the sale of homes began to dwindle, new golf-related real estate construction generated \$805.5 million. With respect to sales, in that same year, the golf premium³ associated with the sale of real estate was said to be at \$576.9 million. Similarly, golf-related tourism stimulates the state's economy and also serves as great destination attraction for the state. Thus, it is estimated that golf-related tourism spending in the state, as of 2007, was approximately \$1.71 billion.

State Trails

A golf trail is "a collection of courses that jointly promote an area or region as a golf trip destination. The golf trail helps identify the better/best golf courses to play and often provides recommendations for lodging, transportation and dining."⁴ The intent behind the creation of such trails is to provide a "one-stop" shop that provides information on golf courses in a specific area accompanied by information relating to nearby hotel, restaurants, and other related tourist activities.⁵

To date, the following states have established golf trails: Alabama, Arkansas, Arizona, California, Colorado, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, New York, Ohio, Oregon, South Carolina, Tennessee, Texas, Utah, Virginia, and Wisconsin.⁶ Some states, such as Alabama⁷, have only one golf trail for the entire state, while other states have more than one. In Florida, the only known golf trail is regionally based in Orlando and is known as the Orlando Golf Trail.⁸

² "Florida is home to number of small producers of golf apparel, custom and high-end golf clubs, golf cars, and golf accessories, e.g., Nicklaus Golf Equipment, Pole-Kat Golf, Diversified Golf Cars, etc. Florida is also home to Perry Ellis, the designer and producer of the Callaway®, PING®, PGA TOUR®, and other golf apparel brands, and *Golfweek* magazine, produced by Turnstile Publishing Company in Orlando, Florida." *Id.* at 7.

³ Premium refers to the "additional amount a buyer is willing to pay for a home or property located on a golf course or within a golf community." *Id.* at 10.

⁴ This description of a golf trail was provided by GolfTrips.com and is available at: <http://www.golftrips.com/golftails/index.cfm> (last visited February 5, 2012).

⁵ The criteria for determining whether an existing golf course will be included in a statewide or regional trail vary for each state.

⁶ *See, supra*, note 4.

⁷ Alabama is home to the Robert Trent Jones Golf Trail. This trail stretches throughout the state and contains 468 hotels on 11 sites.

⁸ *See, supra*, note 4.

Ad Valorem Taxes⁹

The ad valorem tax is annually levied by local governments on all real and personal property as of January 1st of each year. The taxable value of real and tangible personal property is the just value (i.e. fair market value) of the property adjusted for any exclusions, differentials, or exemptions allowed by the state constitution or statutes. With respect to exemptions, the constitution strictly limits the legislature's authority to provide exemptions or adjustments to fair market value.¹⁰

III. Effect of Proposed Changes:

Section 1 amends s. 288.11685, F.S., to provide that Enterprise Florida, Inc., (EFI) may establish, develop, and promote a comprehensive statewide golf trail to, among other things, support the expansion of international and domestic golf tourism in the state.

In this effort, EFI shall cooperate with existing professional and amateur golf associations, golf courses, golf industry businesses, statewide and regional golf marketing efforts, and the PGA Golf Professional Hall of Fame, to implement the statewide golf trail and promote the state's regional and local golf courses and golf industry businesses.

EFI is authorized to designate and may license a proprietary name used for promotion of the statewide golf trails and shall develop criteria for the most effective use of the brand. EFI is further charged with maintaining and protecting the name, brand, proprietary marks, and other intellectual property of the statewide golf trail in a manner that is consistent with state and federal law and that would ensure exclusive use by EFI and its licensees.

EFI is further granted authority to enter into licensing arrangements or contracts with golf courses, tourism promotion agencies, and other golf industry businesses that facilitate the efficient, cost-effective, and successful financing, development, and promotion of the statewide golf trail. EFI may receive compensation for licensing; however, it may not accept any financial responsibility or liability for the creation of a statewide golf trail or its related activities.

Additionally, the Department of Economic Opportunity, the Florida Tourism Industry Marketing Corporation (Visit Florida), and other economic development and tourism promotion agencies at the state and local levels shall support the development, branding, and promotion of the statewide golf trail.

Lastly, EFI is required to submit an annual report, by February 1 of each year, to the President of the Senate and the Speaker of the House of Representatives on the progress and success of the statewide golf trail.

Section 2 creates s. 196.2003, F.S., and encourages the owner of a public or private golf course to donate all or any portion of the golf course property, and any vested or permitted rights, to the state, a local government, or a nonprofit organization for use by the public for recreational,

⁹ Information provided in this section is from the *2011 Florida Tax Handbook* published by the Florida Revenue Estimating Conference.

¹⁰ Fla. Const. art. VII, s. 3.

agricultural, environmental, or educational and training purposes. These purposes may include, but are not limited to, the following:

- Parks or greenways trails;
- Walking, hiking, canoeing, bicycling, or equestrian activities;
- Wildlife viewing, youth recreation, or sports; or
- Agriculture, urban gardening, fishing, hunting, or other outdoor uses.

The owner may donate or retain any vested or permitted rights in the golf course property that is donated under this section. Such property may be exempt from ad valorem taxation under ss. 196.192 or 196.199, F.S.

Lastly, the CS defines the terms “local governments” and “nonprofit organization.”

Section 3 provides that this act shall take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the impact of this CS.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Because EFI will be responsible for entering into licensing agreements, this may result in increased revenues with respect to licensing fees.

VI. Technical Deficiencies:

Section 2 of CS/SB 946 has the following 3 technical deficiencies. First, the term “vested or permitted rights” used in lines 94 and 105 may be vague and misinterpreted. Second, reference to

“public” golf courses in line 92 may also lead to a confusing interpretation since the term could be perceived to imply that a golf course is already government-owned. Third, lines 74-76 appear to be redundant when reading the section with its corresponding statutory cross-references in its entirety.

VII. Related Issues:

CS/SB 946 provides that “any portion of golf course property that is donated to the state, a local government, or a nonprofit organization for use by the public for any purpose described in section (2) is eligible for exemption from ad valorem taxation under ss. 196.192 and 196.199, F.S.

However, ss. 196.192 and 196.199, F.S., read in tandem, appear to only allow for an exemption from ad valorem taxation property that serves either a governmental, municipal, or public purpose¹¹ or an educational, literary, scientific, religious, or charitable purpose.¹² As currently written, it is unclear whether property donated for use by the public for recreational, agricultural, and environmental purposes would satisfy the requirements of these statutes to receive an ad valorem taxation exemption.¹³

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Commerce and Tourism on February 7, 2012:

The committee substitute did the following:

- Removed section that called for deleting entities that operate private or commercial golf courses from the definition of those entities that are not considered qualified active low-income community businesses under the Florida New Markets Development Program.
- Created section that encourages the donation of golf course property to the state, a local government, or a nonprofit organization for certain public uses. Such property may be exempt from ad valorem taxation under ss. 196.192 or 196.199, F.S.

B. Amendments:

None.

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

¹¹ The definition of public purpose is provided in s. 190.012(6), F.S. (2011).

¹² See s. 196.012(1), F.S. (2011); See also *Canaveral Port Auth. v. Dep’t of Revenue*, 690 So. 2d 1226, 1229 (Fla. 1997).

¹³ *Id.* (holding that claimed exemptions found in an enabling statute will be construed in conjunction with ss. 196.001 and 196.99, F.S.).



462242

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/07/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 288.11685, Florida Statutes, is created
to read:

288.11685 Promotion of golf tourism and economic
development; statewide golf trail.-

(1) Enterprise Florida, Inc., may establish within the
state, develop, and promote a comprehensive statewide golf trail
to support the expansion of international and domestic golf
tourism in the state, the creation of jobs, and the economic



462242

development of the golf industry and its related hospitality, travel, sales, retail, real estate, equipment manufacturing, and distribution services in the state.

(2) Enterprise Florida, Inc., to the maximum extent practicable, shall cooperate with existing professional and amateur golf associations, golf courses, golf industry businesses, statewide and regional golf marketing efforts, and the PGA Golf Professional Hall of Fame to effectively implement the statewide golf trail and promote the state's regional and local golf courses and golf industry businesses.

(3) Enterprise Florida, Inc., shall designate and may license a proprietary name used for promotion of the statewide golf trail and shall develop criteria for the most effective use of the brand. Enterprise Florida, Inc., shall maintain and protect the name, brand, proprietary marks, and other intellectual property of the statewide golf trail in a manner consistent with state and federal law which ensures that Enterprise Florida, Inc., and its licensees have exclusive use of such name, brand, proprietary marks, and other intellectual property.

(4) Enterprise Florida, Inc., is encouraged to enter into licensing arrangements or contracts with golf courses, tourism promotion agencies, and other golf industry businesses which facilitate the efficient, cost-effective, and successful financing, development, and promotion of the statewide golf trail. However, Enterprise Florida, Inc., may not accept any financial responsibility or liability for the creation of the statewide golf trail or its related activities but may receive compensation for licensing under subsection (3).



462242

(5) The Department of Economic Opportunity, the Florida Tourism Industry Marketing Corporation, and other economic development and tourism promotion agencies at the state and local levels shall support the development, branding, and promotion of the statewide golf trail.

(6) By February 1 of each year, beginning in 2012, Enterprise Florida, Inc., shall submit an annual report to the President of the Senate and the Speaker of the House of Representatives on the progress and success of the statewide golf trail.

Section 2. Section 196.2003, Florida Statutes, is created to read:

196.2003 Donation of golf course property for public purposes; exemption from ad valorem taxation.—

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

(a) "Local government" means a county, municipality, school district, or other political subdivision of the state.

(b) "Nonprofit organization" means an organization that, according to the criteria in s. 196.195, is a nonprofit venture.

(2) The owner of a public or private golf course is encouraged to donate all or any portion of the golf course property and any vested or permitted rights to the state, a local government, or a nonprofit organization for use by the public for recreational, agricultural, environmental, or educational and training purposes. Such purposes may include, but are not limited to:

(a) Parks or greenway trails.

(b) Walking, hiking, canoeing, bicycling, or equestrian activities.



462242

(c) Wildlife viewing, youth recreation, or sports.

(d) Agriculture, urban gardening, fishing, hunting, or
other outdoor uses.

(3) The owner may donate or retain any vested or permitted
rights in golf course property that is donated under this
section.

(4) Any portion of golf course property that is donated to
the state, a local government, or a nonprofit organization for
use by the public for any purpose described in subsection (2) is
eligible for exemption from ad valorem taxation under ss.
196.192 and 196.199.

Section 3. This act shall take effect July 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

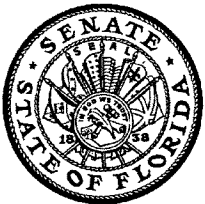
A bill to be entitled

An act relating to economic development; creating s.
288.11685, F.S.; authorizing Enterprise Florida, Inc.,
to establish a statewide golf trail; requiring
Enterprise Florida, Inc., to cooperate with various
entities; requiring Enterprise Florida, Inc., to
designate a proprietary name for the statewide golf
trail; authorizing Enterprise Florida, Inc., to
license the name and receive compensation for such
licensing; requiring Enterprise Florida, Inc., to
maintain and protect the name, brand, proprietary
marks, and intellectual property of the statewide golf



462242

trail in a specified manner; encouraging Enterprise Florida, Inc., to enter into certain licensing arrangements or contracts; prohibiting Enterprise Florida, Inc., from accepting certain financial responsibility or liability for the statewide golf trail; directing various economic development and tourism promotion agencies to support the statewide golf trail; requiring Enterprise Florida, Inc., to submit an annual report to the Legislature on the statewide golf trail; creating s. 196.2003, F.S.; defining the terms "local government" and "nonprofit organization" for purposes of the act; encouraging the donation of public or private golf course property to the state, a local government, or a nonprofit organization for certain purposes; authorizing the owners of golf course property to donate or retain any vested or permitted rights in the property; providing that any portion of golf course property that is donated is eligible for exemption from ad valorem taxation; providing an effective date.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Chair*
Banking and Insurance
Budget - Subcommittee on Criminal and Civil Justice
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Criminal Justice
Military Affairs, Space, and Domestic Security

SENATOR MICHAEL S. "MIKE" BENNETT

President Pro Tempore
21st District

January 12, 2012

The Honorable Nancy Detert
Chair, Commerce Committee
310 Knott Building
404 S. Monroe St.
Tallahassee, FL 32399

Dear Chairman Detert:

I am requesting that you place S946, Economic Development (golf trails), on your committee agenda as soon as possible.

If you have any questions, please let me know. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be "Mike Bennett".

Michael S. "Mike" Bennett
/cre

Cc: Jennifer Hrdlicka, Staff Director
Patty Blackburn Administrative Assistant
Charlie Anderson

posted 1/12/11
psb

REPLY TO:

- ☐ Wildewood Professional Park, Suite 90, 3653 Cortez Road West, Bradenton, Florida 34210 (941) 727-6349
- ☐ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5078

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/7/12

Meeting Date

Topic GOLF ECONOMIC DEVELOPMENT

Bill Number SB 946
(if applicable)

Name JEFFREY SHARKEY

Amendment Barcode _____
(if applicable)

Job Title President GAB

Address 106 E Colley Ave # 100

Phone 224 1660

TLH FL 32301
City State Zip

E-mail JEFFREYSHARKEY@GOLFGOLF.COM

Speaking: ☒ For ☐ Against ☐ Information

Representing PGA TOUR, WOOD GOLF FOUNDATION

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 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Budget - Subcommittee on Education Pre-K - 12
Appropriations
Commerce and Tourism
Community Affairs
Health Regulation

SENATOR JEREMY RING

32nd District

February 7, 2012

Chairwoman Nancy Detert
318 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

RECEIVED

FEB 07 2012

COMMERCE

Dear Chairwoman Detert,

I am requesting to be excused from the Commerce and Tourism committee scheduled for February 7th due to the fact that I was presenting a bill in Banking and Insurance and it prevented me from attending the meeting.

Thank you in advance for considering this request to be excused from the Commerce and Tourism meeting scheduled for February 7th. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 32

REPLY TO:

- ☐ 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392
- ☐ 210 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5094

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

CourtSmart Tag Report

Room: SB 401

Case:

Caption: Senate Committee on Commerce and Tourism

Type:

Judge:

Started: 2/7/2012 1:33:55 PM

Ends: 2/7/2012 2:12:05 PM Length: 00:38:11

1:34:07 PM	Call to order
1:34:14 PM	Roll Call
1:34:29 PM	Tab 5
1:34:33 PM	Senator Hays presents
1:35:05 PM	Roll Call
1:35:35 PM	Tab 4
1:35:38 PM	Senator Bennett presents
1:37:01 PM	Roll Call
1:37:18 PM	Tab 6
1:37:22 PM	Senator Bennett presents
1:37:35 PM	Bennett presents strike all by Senator Lynn
1:38:42 PM	Senator Dockery question
1:39:01 PM	Response
1:39:26 PM	Follow up
1:39:37 PM	Response
1:40:02 PM	Question from chair
1:40:06 PM	Response
1:40:17 PM	Senator Dockery follow-up comment
1:40:34 PM	Senator Lynn question
1:40:53 PM	Response
1:41:42 PM	On bill as amended
1:41:52 PM	Roll Call
1:42:20 PM	Tab 3
1:42:22 PM	Senator Oelrich presents
1:45:01 PM	Senator Oelrich closes
1:45:10 PM	Roll Call
1:45:45 PM	Tab 1
1:45:49 PM	Staff (Jennifer Hrdlicka) presents
1:46:48 PM	Senator Dockery moves to introduce PCB
1:47:50 PM	Tab 2
1:48:15 PM	Carol Dover presents for industry
1:56:19 PM	Comment from chair
1:56:56 PM	Warren Husband
1:59:49 PM	Senator Lynn question
2:00:06 PM	Response
2:01:03 PM	Senator Montford
2:03:45 PM	Andrew Reiss
2:06:25 PM	Jeff Sharkey
2:09:02 PM	Senator Dockery with an open question for members of the audience
2:10:38 PM	Senator Lynn comment
2:11:29 PM	Comment by chair
2:11:53 PM	Meeting closes