

**CS/SB 328** by **RI, Latvala**; (Similar to H 0039) Public Accountancy

731830 A S RCS AP, Latvala Delete L.76: 03/07 03:18 PM

**SB 138** by **Brandes (CO-INTRODUCERS) Dean, Benacquisto**; (Identical to H 7003) Interstate Compact on Educational Opportunity for Military Children

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**CS/SB 50** by **GO, Negrón (CO-INTRODUCERS) Evers**; (Similar to H 0023) Public Meetings

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

**APPROPRIATIONS**  
**Senator Negrón, Chair**  
**Senator Benacquisto, Vice Chair**

**MEETING DATE:** Thursday, February 21, 2013  
**TIME:** 3:00 —5:00 p.m.  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Negrón, Chair; Senator Benacquisto, Vice Chair; Senators Bean, Bradley, Galvano, Gardiner, Grimsley, Hays, Hukill, Latvala, Margolis, Montford, Richter, Ring, Smith, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 328</b> Regulated Industries / Latvala (Similar H 39)	Public Accountancy; Revising provisions for the distribution of scholarships under the Certified Public Accountant Education Minority Assistance Program; revising the annual maximum expenditures and frequency of distribution of moneys for the scholarships; requiring the Board of Accountancy to adopt rules for peer review programs; authorizing the board to establish a peer review oversight committee, etc.  RI     02/06/2013 Fav/CS AP     02/21/2013 Temporarily Postponed	Temporarily Postponed
2	<b>SB 138</b> Brandes (Identical H 7003)	Interstate Compact on Educational Opportunity for Military Children; Providing for future legislative review and repeal of the Interstate Compact on Educational Opportunity for Military Children, etc.  MS     01/23/2013 Favorable ED     02/05/2013 Favorable AP     02/21/2013 Fav/CS	Fav/CS Yeas 16 Nays 0
3	<b>CS/SB 50</b> Governmental Oversight and Accountability / Negrón (Similar H 23)	Public Meetings; Requiring that a member of the public be given a reasonable opportunity to be heard by a board or commission before it takes official action on a proposition; providing that compliance with the requirements of this section is deemed to have occurred under certain circumstances; providing that a circuit court has jurisdiction to issue an injunction under certain circumstances; providing that an action taken by a board or commission which is found in violation of this section is not void, etc.  GO     02/06/2013 Fav/CS AP     02/21/2013 Favorable RC	Favorable Yeas 16 Nays 0

Other Related Meeting Documents

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

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

Prepared By: The Professional Staff of the Committee on Appropriations

**BILL:** CS/SB 328

**INTRODUCER:** Regulated Industries Committee and Senator Latvala

**SUBJECT:** Public Accountancy

**DATE:** February 18 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

<b>Please see Section VIII. for Additional Information:</b>	
A. COMMITTEE SUBSTITUTE.....	<input 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 328 increases the frequency of disbursements to twice per year for scholarships funded by a portion of license fees set by the Board of Accountancy and collected by the Department of Business and Professional Regulation under the Certified Public Accountant Education Minority Assistance Program. Currently, scholarship disbursements are made once per year. Additionally, the maximum amount the department is authorized to spend for scholarships is increased from \$100,000 to \$200,000 per year.

The bill also requires CPA firms to be enrolled in a peer review program as a condition of licensure as of January 1, 2015, if they are engaged in the practice of public accounting as described in s. 473.302(8)(a), F.S. Peer review is defined in the bill as the study, appraisal or review by one or more independent Certified Public Accountants (CPA) of one or more aspects of the professional work of a licensee engaged in the practice of public accounting.

There is no fiscal impact for the 2013-2014 fiscal year related to agency workload, and there is no increased appropriation for the Certified Public Accountant Education Minority Assistance Program.

The Florida Board of Accountancy is required to adopt rules for the minimum standards for peer review programs and the minimum criteria for the peer review organizations that will administer the programs. A peer review oversight committee may be established by the board which includes three to five members licensed under ch. 473, F.S., and whose firms are subject to peer review and have received a “pass” rating on the most recent peer review.

The bill has an effective date of July 1, 2013.

This bill substantially amends sections 473.3065 and 473.311, Florida Statutes.

The bill creates section 473.3125, Florida Statutes.

## II. Present Situation:

The Board of Accountancy (board) within the Department of Business and Professional Regulation (department) is the agency charged with regulating the practice of public accountancy.<sup>1</sup> Administrative services for the board are provided by the Division of Certified Public Accounting (division), including, but not limited to, recordkeeping services, examination services, legal services, and investigative services, and those services in ch. 455, F.S., necessary to perform the board’s duties under the chapter. The division’s offices are located in Gainesville.<sup>2</sup>

Section 473.302(4), F.S., defines a “certified public accountant” to mean a person who holds a license to practice public accounting in this state under the authority of ch. 473, F.S.

Section 473.302(8), F.S., defines the “practice of,” “practicing public accountancy,” or “public accounting” to mean:

(a) Offering to perform or performing for the public one or more types of services involving the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or the expression of an opinion on the reliability of an assertion by one party for the use by a third party;

(b) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of tax, management advisory, or consulting services, by any person who is a certified public accountant who holds an active license, including the

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<sup>1</sup> Section 473.303, F.S.

<sup>2</sup> See s. 20.165(2)(c)2., F.S.

performance of such services by a certified public accountant in the employ of a person or firm; or

(c) Offering to perform or performing for the public one or more types of service involving the preparation of financial statements not included within paragraph (a), by a certified public accountant who holds an active license, a firm of certified public accountants, or a firm in which a certified public accountant has an ownership interest, including the performance of such services in the employ of another person. The board shall adopt rules establishing standards of practice for such reports and financial statements; provided, however, that nothing in this paragraph shall be construed to permit the board to adopt rules that have the result of prohibiting licensees employed by unlicensed firms from preparing financial statements as authorized by this paragraph.

However, these terms [of practice] shall not include services provided by the American Institute of Certified Public Accountants or the Florida Institute of Certified Public Accountants, or any full service association of certified public accounting firms whose plans of administration have been approved by the board, to their members or services performed by these entities in reviewing the services provided to the public by members of these entities.

Section 473.302(5), F.S., defines the term “firm” to mean “any entity that is engaged in the practice of public accounting.”

Section 473.3101(1)(a), F.S., requires that firms must hold a license if the firm:

- Uses the title “CPA,” “CPA firm,” or any other title, designation, words, letters, abbreviations, or device tending to indicate that the firm practices public accounting; or
- Does not have an office in this state but performs the services described in s. 473.3141(4), F.S.,<sup>3</sup> for a client having its home office in this state, as defined by rule of the board.

### **Education Minority Assistance Program**

The Certified Public Accountant Education Minority Assistance Program (program) for Florida residents was created by enactment of ch. 98-263, L.O.F., codified in s. 473.3065, F.S. It is administered by the board with the assistance of the Certified Public Accountant Education Minority Assistance Advisory Council (council) and provides scholarships to minority persons, as defined in s. 288.703, F.S., who are students enrolled in their fifth year of a board-approved accounting education program at an institution in Florida.

The council consists of five licensed Florida CPAs selected by the board and is required to be diverse and representative of the gender, ethnic, and racial categories set forth in s. 288.703(4), F.S. One member of the board serves as chair of the council, one council

<sup>3</sup> Section 473.3141, F.S., provides the practice requirements for CPA’s from out-of-state.

member must be a representative of the National Association of Black Accountants, one council member must be a representative of the Cuban American CPA Association, and two council members are selected at large. At least one member of the council must be a woman.<sup>4</sup>

Vacancies on the council must be filled in the manner provided for the selection of the initial member. A member appointed to fill a vacancy of an unexpired term is appointed for the remainder of that term. Three consecutive absences or absences constituting 50 percent or more of the council's meetings within any 12-month period cause the council membership of the member in question to become void, and the position is considered vacant. The members of the council serve without compensation; however, any necessary and actual expenses incurred by a member while engaged in the business of the council are borne by the member or by the organization or agency a member represents, except that the council member who is a member of the board is compensated in accordance with s. 455.207(4), F.S. (\$50 for each day of participation in business involving the board) and s. 112.061, F.S. (per diem and travel expenses).

Scholarships under the program are funded by a portion of existing license fees, as set by the board, not to exceed \$10 per license. The department is currently authorized to spend up to \$100,000 per year for the program but may not allocate overhead charges to it. Scholarship moneys are disbursed annually upon recommendation of the advisory council and approval by the board, based on the adopted eligibility criteria and comparative evaluation of all applicants. Funds in the program account may be invested by the Chief Financial Officer under the same limitations that apply to investment of other state funds, and all interest earned thereon is credited to the program account. According to the department, the program account balance was \$139,754 as of June 30, 2012, the largest balance in the last six years.

Rule Chapter 61H1-38, Florida Administrative Code, contains the rules adopted by the board to administer the program. These rules include the eligibility criteria for receipt of a scholarship, (including financial need, ethnic, gender, or racial minority status pursuant to s. 288.703(4), F.S., and scholastic ability and performance), scholarship application procedures, the amounts of scholarships, the total amount of scholarships that may be provided, the time frame for payments or partial payments, and criteria for how scholarship funds may be expended, the total amount of scholarships that can be made each year, and the minimum balance that must be maintained in the program account. Decisions concerning recipients of scholarship moneys are not agency action for purposes of the Administrative Procedure Act, ch. 120, F.S.

### **Peer Review**

According to the Florida Institute of Certified Public Accountants (FICPA), the American Institute of Certified Public Accountants (AICPA) requires its member firms to undergo a peer review every three years. A peer review is a periodic external review of a firm's quality control system in accounting and auditing and is also known as the AICPA's practice monitoring

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<sup>4</sup> Section 473.3065(6)(a), F.S.

program. Members of the AICPA engaged in the practice of public accounting are required to practice in a firm that is enrolled in an approved practice-monitoring program such as the Peer Review Program. At present, the FICPA administers the AICPA Peer Review Program for firms that are members of the AICPA and for firms that are not members of the AICPA. The program is designed to be educational for public accounting firms and to enhance the quality of their accounting and auditing work. It also allows firms to communicate with their fellow peers about the objectives of the accounting profession.<sup>5</sup>

The State of Florida currently does not require that CPA firms participate in a peer review program as a condition of licensure and does not have a peer review oversight committee or other oversight process for peer review. According to the FICPA, which has over 18,000 members,<sup>6</sup> Florida and Delaware are the only two states that do not require evidence of peer review as a condition of firm license renewal for those firms offering attest services to their clients. Public accounting services as described in s. 473.302(8)(a), F.S., involve offering to perform or performing for the public one or more types of services involving the:

- Expression of an opinion on financial statements;
- Attestation as an expert in accountancy to the reliability or fairness of presentation of financial information;
- Utilization of any form of opinion or financial statements that provide a level of assurance;
- Utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed; or
- Expression of an opinion on the reliability of an assertion by one party for the use by a third party.

In 2010, the board unanimously approved the concept of peer review as a requirement for firm license renewal.<sup>7</sup> Further, according to the FICPA, peer review:

- Will help improve the quality of a CPA firm's accounting and auditing practices;
- Is based on the principle that a systemic monitoring and educational process is the most effective way to attain high-quality performance throughout the profession; and
- Will provide reasonable assurance that a CPA firm is complying with professional standards in all material respects.

According to the AICPA website, Section 1002, Paragraph .06 of its Standards for Performing and Reporting on Peer Reviews delineates the following accounting procedures as subject to peer review:

*An accounting and auditing practice* for the purposes of these standards is defined as all engagements covered by Statements on Auditing Standards (SASs); Statements on Standards for Accounting and Review Services (SSARS) (see interpretations); Statements on Standards for Attestation

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<sup>5</sup> <http://www.ficpa.org/Content/Members/PeerReview.aspx> (Last visited February 4, 2013).

<sup>6</sup> <http://www.ficpa.org/Content/AboutJoin/about.aspx> (Last visited February 4, 2013).

<sup>7</sup> See correspondence from David C. Tipton, CPA, Chairman, Florida Board of Accountancy, to the Florida Institute of Certified Public Accountants, dated December 7, 2010, which is on file with the Senate Committee on Regulated Industries.

Engagements (SSAEs); *Government Auditing Standards* (the Yellow Book) issued by the U.S. Government Accountability Office; and audits of non-SEC issuers performed pursuant to the standards of the Public Company Accounting Oversight Board (PCAOB) (see interpretations).<sup>8</sup>

According to the FICPA:

- Not all CPA firms will be required to have a peer review conducted on their firm. CPA firms that limit their practices to tax or consulting services would not be required to have a peer review, as the requirement only applies to firms that perform attest services, including compilations.
- There will be no impact on CPAs in private industry, education, or government because the requirement applies only to CPAs in public practice (accounting and auditing practices).
- Peer review is not an entirely new requirement for most Florida CPA firms performing attest and compilation services. The American Institute of Certified Public Accountants (AICPA) has had a peer review program for its more than 30,000 members since 1989, and approximately 75 percent of FICPA members that are also AICPA members are required to participate in that program.

In addition, the Government Accounting Office has a peer review requirement for CPA firms that perform audits under government auditing standards.<sup>9</sup>

Furthermore, according to the FICPA, under AICPA standards, a reviewer would be required to meet certain requirements to serve as a reviewer and be approved by an approved administering entity or the AICPA National Peer Review Committee. Those standards require that a reviewer be currently active in the accounting and auditing area and be a partner or manager of a firm that has received a passing grade on its most recent peer review. A peer reviewer also must have current or recent experience for significant or high-risk industry areas in which the peer-reviewed firm performs attest services. Firms may select their own peer reviewer, as long as the reviewer and his or her firm are independent of the reviewed firm and do not provide certain restricted services to the reviewed firm.

### III. Effect of Proposed Changes:

The bill modifies the Certified Public Accountant Education Minority Assistance Program to allow disbursements for approved scholarships twice per year, rather than once per year, and authorizes the Department of Business and Professional Regulation to spend up to \$200,000 per year instead of up to \$100,000 per year, for the program.

CPA firms are required by the bill to enroll in a peer review program as a condition of licensure, if they engage in the practice of public accounting as described in s. 473.302(8)(a), F.S. The bill establishes a peer review program defined as the study, appraisal or review by one or more

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<sup>8</sup> <http://www.aicpa.org/Research/Standards/PeerReview/DownloadableDocuments/PeerReviewStandards.pdf> (Last visited February 4, 2013).

<sup>9</sup> See Paragraph 3.82b of 2011 Government Auditing Standards (GAGAS 2011) as revised December 23, 2011 at <http://www.gao.gov/yellowbook> (Last visited February 4, 2013).

independent CPAs of one or more aspects of the professional work of a licensee engaged in the practice of public accounting.

The bill requires the Florida Board of Accountancy to adopt rules for the minimum standards for peer review programs and the minimum criteria for the peer review organizations that will administer the programs. It is authorized to establish a peer review oversight committee of three to five members licensed under ch. 473, F.S., whose firms are subject to peer review and have received a “pass” rating on the most recent peer review.

Further, the FICPA anticipates that adoption of peer review as a state licensing requirement in Florida will result in the implementation of standards similar to those that are already in place throughout virtually all of the United States.

#### **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

Effective January 1, 2015, all CPA firms engaged in the practice of public accounting pursuant to s. 473.302(8)(a), F.S., will be required to be enrolled in a peer review program, which will require payment of peer reviewer fees. The FICPA has indicated that the cost of peer review is not fixed, but depends upon the nature, complexity and size of a firm’s accounting and auditing practice. The cost of peer review every three years is estimated by the FICPA to range from \$990 to \$3,015, depending upon the number of peer review hours required to conduct the review (annualized cost of \$330 to \$1,015), as calculated below.

**Sample peer review costs for sole practitioner firms**

Sole practitioner firm performing no audits –	
Administrative fee per year @ \$130 x 3 yrs	\$390
Peer review – reviewer – approximately	<u>\$600</u>
Total cost over three years	\$990
<b>Annualized cost</b>	<b>\$330</b>

Sole practitioner firm performing one audit, review and compilation – Administrative fee per year @ \$130 x 3yrs.	\$390
Peer review – reviewer – approximately 10-15 hrs at reviewer rate (say \$175/hr)	<u>\$1,750 - \$2,625</u>
Total cost over three years	\$2,140 - \$3,015
<b>Annualized cost</b>	<b>\$713 - \$1,005</b>

C. Government Sector Impact:

Rules adopted by the board for the Certified Public Accountant Minority Assistance Program will require review and revision to conform to the modification of the frequency of scholarship awards and of the amount available for awarding of scholarships.

Additionally, the board will be required to adopt rules establishing minimum standards for peer review programs and minimum criteria for the board’s approval of one or more organizations that facilitate and administer peer review programs. The board may establish a peer review oversight committee of between three and five public accountants licensed under ch. 473, F.S. whose firms are subject to the biennial license renewal requirements of s. 473.311(2), F.S. and have undergone peer review and received a review rating of “pass” on the most recent review.

According to the department, the bill:

- May require additional resources for the division’s Enforcement Section to handle potential complaints and investigations based upon the failure to comply with the peer review requirement. This impact is indeterminate at this time.
- May increase workload at both the investigative and prosecutorial level for pursuit of disciplinary cases by the department’s General Counsel for failure to comply with the peer review requirement. This impact is indeterminate at this time.

No additional funds are needed to address workload associated with the bill for Fiscal Year 2013-2014. If future workload impacts be realized, the department may request additional resources as part of its legislative budget request.

No appropriation is included in the bill to increase the funding for the Certified Public Accountant Education Minority Assistance Program. The bill authorizes the department to spend up to \$200,000 for the program; however, the 2012-2013 General Appropriations Act provided \$100,000 for the program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that a member of the peer review oversight committee would have to be a member of a CPA firm that has participated in peer review and has received a rating of “pass” on its most recent peer review. This provision assumes that the board rules will follow the standards and terminology of the AICPA regarding these ratings.<sup>10</sup>

**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 Regulated Industries on February 6, 2013:**

The committee substitute requires that effective January 1, 2015, all CPA firms engaged in the practice of public accounting pursuant to s. 473.302(8)(a), F.S., (i.e. providing certain opinions or attest services) be enrolled in a peer review program. Under the original bill as filed, effective January 1, 2015, renewal of licensure for CPA firms engaged in the practice of public accounting pursuant to s. 473.302(8)(a), F.S., would have required certification by the Board of Accountancy that the firm requesting renewal of licensure was enrolled in a peer review program.

- B. **Amendments:**

None.

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

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<sup>10</sup> The AICPA standards rate a CPA firm as pass, pass with deficiencies, and fail. See <http://www.aicpa.org/Research/Standards/PeerReview/DownloadableDocuments/PeerReviewStandards.pdf> (Last visited February 4, 2013).



731830

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2013	.	
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The Committee on Appropriations (Latvala) recommended the following:

**Senate Amendment**

Delete line 76  
and insert:  
public accounting as defined in s. 473.302(8)(a), except for the performance of compilations and reviews as those terms are defined by the board, must be

By the Committee on Regulated Industries; and Senator Latvala

580-01571-13

2013328c1

1 A bill to be entitled  
 2 An act relating to public accountancy; amending s.  
 3 473.3065, F.S.; revising provisions for the  
 4 distribution of scholarships under the Certified  
 5 Public Accountant Education Minority Assistance  
 6 Program; revising the annual maximum expenditures and  
 7 frequency of distribution of moneys for the  
 8 scholarships; amending s. 473.311, F.S.; clarifying  
 9 provisions; creating s. 473.3125, F.S.; providing  
 10 definitions; requiring the Board of Accountancy to  
 11 adopt rules for peer review programs; authorizing the  
 12 board to establish a peer review oversight committee;  
 13 requiring certain licensees to be enrolled in a peer  
 14 review program by a certain date; providing an  
 15 effective date.

16  
 17 Be It Enacted by the Legislature of the State of Florida:

18  
 19 Section 1. Subsection (2) of section 473.3065, Florida  
 20 Statutes, is amended to read:

21 473.3065 Certified Public Accountant Education Minority  
 22 Assistance Program; advisory council.—

23 (2) All moneys used to provide scholarships under the  
 24 program shall be funded by a portion of existing license fees,  
 25 as set by the board, not to exceed \$10 per license. Such moneys  
 26 shall be deposited into the Professional Regulation Trust Fund  
 27 in a separate account maintained for that purpose. The  
 28 department ~~may be authorized to~~ spend up to ~~\$200,000~~ \$100,000  
 29 per year for the program from this program account, but may not

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

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30 allocate overhead charges to it. Moneys for scholarships shall  
 31 be disbursed twice per year ~~annually~~ upon recommendation of the  
 32 advisory council and approval by the board, based on the adopted  
 33 eligibility criteria and comparative evaluation of all  
 34 applicants. Funds in the program account may be invested by the  
 35 Chief Financial Officer under the same limitations as apply to  
 36 investment of other state funds, and all interest earned thereon  
 37 shall be credited to the program account.

38 Section 2. Section 473.311, Florida Statutes, is amended to  
 39 read:

40 473.311 Renewal of license.—

41 (1) The department shall renew a license issued under s.  
 42 473.308 upon receipt of the renewal application and fee and upon  
 43 certification by the board that the Florida certified public  
 44 accountant has satisfactorily completed the continuing education  
 45 requirements of s. 473.312.

46 (2) The department shall adopt rules establishing a  
 47 procedure for the biennial renewal of licenses issued pursuant  
 48 to this section.

49 Section 3. Section 473.3125, Florida Statutes, is created  
 50 to read:

51 473.3125 Peer review.—

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

53 (a) "Licensee" means a sole proprietor, partnership,  
 54 corporation, limited liability company, or any other firm  
 55 engaged in the practice of public accounting as defined in s.  
 56 473.302(8)(a) that is required to be licensed under s. 473.3101.

57 (b) "Peer review" means the study, appraisal, or review by  
 58 one or more independent certified public accountants of one or

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59 more aspects of the professional work of a licensee.

60 (2) The board shall adopt rules establishing minimum  
61 standards for peer review programs, including, but not limited  
62 to, standards for administering, performing, and reporting peer  
63 reviews. The board shall also adopt rules establishing minimum  
64 criteria for the board's approval of one or more organizations  
65 that facilitate and administer peer review programs.

66 (3) For the purposes of maintaining oversight of the  
67 license renewal requirements of s. 473.311(2), the board may  
68 establish a peer review oversight committee, which shall be  
69 composed of at least three, but no more than five, members who  
70 are licensed under this chapter and whose firms are subject to  
71 s. 473.311(2) and have received a review rating of "pass" on the  
72 most recent peer review.

73 (4) Effective January 1, 2015, a sole proprietor,  
74 partnership, corporation, limited liability company, or other  
75 firm licensed under s. 473.3101 and engaged in the practice of  
76 public accounting as defined in s. 473.302(8)(a) must be  
77 enrolled in a peer review program.

78 Section 4. This act shall take effect July 1, 2013.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/2/13

Meeting Date

Topic PUBLIC ACCOUNTANCY Bill Number 320  
Name DEBORAH CURRY, CPA Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title PRESIDENT/CEO (if applicable)  
Address 325 W. COLLEGE AVE. Phone 224-2727  
TALLA. FL 32302 E-mail \_\_\_\_\_  
Street City State Zip

Speaking:  For  Against  Information

Representing FCA INSTITUTE OF CPAS

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/13

Meeting Date

Topic PUBLIC ACCOUNTANCY

Bill Number SB 328 (if applicable)

Name JENNIFER GREEN

Amendment Barcode (if applicable)

Job Title CONSULTANT

Address P.O. BOX 390

Phone 850 | 841-1726

Street TALLAHASSEE, FL 32302 City State Zip

E-mail JENNIFER@LIBERTY PARTNERS FL.COM

Speaking: [X] For [ ] Against [ ] Information

Representing FLORIDA INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [X] 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.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Ethics and Elections, *Chair*  
Budget - Subcommittee on General Government  
Appropriations  
Budget - Subcommittee on Transportation, Tourism,  
and Economic Development Appropriations  
Community Affairs  
Environmental Preservation and Conservation  
Rules  
Judiciary  
Appropriations  
Select Committee on Gaming

### SENATOR JACK LATVALA

20th District

February 7, 2013

The Honorable Senator Joe Negron, Chair  
Senate Committee on Appropriations  
201 The Capitol  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Negron:

I respectfully request consideration of Senate Bill 328 regarding Public Accounting at your earliest convenience.

This bill will enhance the scholarship opportunities for minority students enrolled in an accounting program in our state, and will also align Florida's CPA license renewal requirements with those of 48 other states and improve the regulatory efficiency of the accounting profession.

I would greatly appreciate the opportunity to present this legislation to the Committee on Appropriations as soon as possible.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jack".

Jack Latvala  
State Senator  
District 20

Cc: Mike Hansen, Staff Director; Alicia Weiss, Administrative Assistant

**REPLY TO:**

- 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

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

**Don Gaetz**  
President of the Senate

**Garrett Richter**  
President Pro Tempore

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

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

Prepared By: The Professional Staff of the Committee on Appropriations

**BILL:** CS/SB 138

**INTRODUCER:** Appropriations Committee and Senator Brandes

**SUBJECT:** Interstate Compact on Educational Opportunity for Military Children

**DATE:** February 22, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Spaulding	Ryon	MS	<b>Favorable</b>
2.	Hand	Klebacha	ED	<b>Favorable</b>
3.	Elwell	Hansen	AP	<b>Fav/CS</b>
4.				
5.				
6.				

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 138 reenacts provisions of law establishing and implementing the Interstate Compact on Educational Opportunity for Military Children (compact) and provides for future legislative review and repeal of the compact three years following the effective date of the act (which is, for the bill, upon becoming a law).

The bill provides a recurring appropriation to the Department of Education (DOE) in the amount of \$42,813 from the General Revenue Fund for the Fiscal Year 2013-2014 membership dues for the Interstate Commission on Educational Opportunity for Military Children.

The bill repeals section 3, chapter 2010-52, Laws of Florida, which provides for a future repeal of sections 1000.36, 1000.37, 1000.38, and 1000.39 of the Florida Statutes.

## II. Present Situation:

### Interstate Compact on Educational Opportunity for Military Children

Children in active-duty military families face unique educational challenges. The average military child transfers to a different state or school district six to nine times during kindergarten through grade 12. When a parent is reassigned, military children may be impacted by:

- Record transfer issues;
- Varied course sequencing and academic placement policies;
- Varied graduation requirements;
- Exclusion from extracurricular activities;
- Redundant or missed entrance or exit testing;
- Varied kindergarten and first grade entrance ages; and
- The need to appoint temporary guardians while the child's parent is deployed.<sup>1</sup>

The Interstate Compact on Educational Opportunity for Military Children assists member states in uniformly addressing educational transition issues faced by active-duty military families. Developed by the Council of State Governments, in cooperation with the U.S. Department of Defense,<sup>2</sup> the compact governs member states in several areas, including school placement, enrollment, records transfer, participation in academic programs and extracurricular activities, and on-time-graduation for children of active-duty military families. A compact is essentially a contract between sovereigns.<sup>3</sup>

States were required to enact the compact into law in order to join the compact, which the Florida Legislature did in the 2008 General Session.<sup>4</sup> Enactment by ten states was required in order for the compact to take effect and be binding on member states, which occurred when Delaware became the tenth state to adopt the compact on July 9, 2008.<sup>5</sup> Currently, 43 states and the District of Columbia are members of the compact.<sup>6</sup>

The compact establishes an Interstate Commission on Educational Opportunity for Military Children (Commission) to provide national-level oversight of the compact, adopt and enforce bylaws and compact rules, and perform various administrative functions necessary to day-to-day operations.<sup>7</sup> The Commission is comprised of one voting representative, or Compact Commissioner, from each member state. Each state is entitled to one vote on compact rule adoption or other business matters.<sup>8</sup> The Commission must meet at least once per year.<sup>9</sup>

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<sup>1</sup> Military Interstate Children's Compact Commission, *Interstate Compact on Educational Opportunity for Military Children: Legislative Resource Kit*, at 6-7 (Jan. 2011), available at <http://www.mic3.net/pages/commissioners/documents/2011LegislativeResourceKit-Final.pdf> (last viewed January 25, 2013).

<sup>2</sup> *Id.* at 7-10.

<sup>3</sup> See, *Florida House of Representatives v. Crist*, 999 So.2d 601, 609 (Fla. 2008).

<sup>4</sup> Chapter 2008-225, L.O.F.; CS/HB 1203 (2008); ss. 1000.36, 1000.37, 1000.38, and 1000.39, F.S.

<sup>5</sup> Article XV, s. B. of the Compact, s. 1000.36, F.S.; 76 Del. Laws 327 (2008).

<sup>6</sup> Military Interstate Children's Compact Commission, *Member and Nonmember States Map* (July 2012), available at <http://mic3.net/pages/resources/documents/MIC3ColorMapJul1.pdf>.

<sup>7</sup> Articles IX and X, of the Compact, s. 1000.36, F.S.

<sup>8</sup> Article IX, s. B. of the Compact, s. 1000.36, F.S.

<sup>9</sup> Article IX, s. D. of the Compact, s. 1000.36, F.S.

## Compact Rule Adoption

The Commission is authorized to promulgate compact rules which govern member states in the areas addressed by the compact. Compact rules have the force and effect of statutory law in member states and supersede conflicting member state laws to the extent of the conflict.<sup>10</sup> Compact rules must not exceed the scope of authority granted by the compact. A majority of member state legislatures may invalidate a compact rule by legislative action.<sup>11</sup>

Since enactment in 2008, Florida's compact legislation has included a repeal provision which requires automatic repeal of the compact after a period of time, unless reauthorized by the Legislature.<sup>12</sup> The repeal provision addresses concerns regarding unconstitutional delegation of legislative authority under Article II, s. 3, of the Florida Constitution.<sup>13</sup> Because membership in the compact entails an agreement to be bound by rules promulgated by a non-legislative entity, i.e., the Commission, the repeal provision allows the Legislature to periodically review the compact rules and determine whether it agrees with any new rules or rule amendments adopted during the period. Reauthorization of the compact after such review diminishes a claim that the Legislature has delegated its authority.<sup>14</sup>

The Legislature last reauthorized the compact in 2010, and provided for repeal of the compact in three years, which is May 11, 2013.<sup>15</sup> Since then, two rule amendments have been adopted by the Commission:

- Compact rule 2.104, which provides the compact membership dues formula, was amended in November 2011 to establish a minimum dues obligation of \$2,000 and a maximum dues obligation of \$60,000.
- Compact rule 3.102, relating to kindergarten and first grade entrance age, was amended in November 2012 to clarify that a student must "*physically attend*" kindergarten in the sending state in order to transfer into kindergarten in the receiving state.<sup>16</sup>

Neither amendment impairs Florida's continued participation in the compact.

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<sup>10</sup> Article X, s. B. and XVIII, s. B. of the Compact, s. 1000.36, F.S. The Compact also provides that if any part of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state. See, Article XVIII, s. E., of the Compact, s. 1000.36, F.S. Through a formal process of regular review and reauthorization, the Florida Legislature has mitigated potential conflicts that might arise within the context of a delegation of authority challenge.

<sup>11</sup> Article XII of the Compact, s. 1000.36, F.S.

<sup>12</sup> See, ss. 5, ch. 2008-225; 3, ch. 2010-52, L.O.F.

<sup>13</sup> Article II, s. 3 of the Florida Constitution provides for separation of powers among the executive, legislative, and judicial branches of state government. The Florida Supreme Court has held that it is an unconstitutional delegation of legislative authority for the Legislature to prospectively adopt rules not yet promulgated by federal administrative bodies. See, *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972); *Fla. Indus. Commission v. State ex rel. Orange State Oil Co.*, 21 So.2d 599, 603 (Fla. 1945).

<sup>14</sup> See, Florida Senate, Legislative Bill Analysis for SB 1060 (2010).

<sup>15</sup> Sections 3 and 4, ch. 2010-52, L.O.F.

<sup>16</sup> Interstate Commission on Educational Opportunity For Military Children, Rules (Nov. 2012), available at <http://mic3.net/pages/commissioners/documents/MIC3CommissionRules-Final-amendedNov2012.pdf> (see rules 2.104 and 3.102).

### III. Effect of Proposed Changes:

**Section 1** repeals s. 3, ch. 2010-52, L.O.F., which provides for automatic repeal of the compact legislation.

**Section 2** provides for repeal of ss. 1000.36, 1000.37, 1000.38, and 1000.39, F.S., the “Interstate Compact on Educational Opportunity for Military Children,” three years after the effective date of the bill unless reviewed and reenacted by the Legislature.

**Section 3** provides a recurring appropriation of \$42,813 to the DOE from the General Revenue Fund to pay Florida’s Fiscal Year 2013-2014 dues to the commission.

**Section 4** provides that the bill takes effect upon becoming law.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Supreme Court has held that it is an unconstitutional delegation of legislative authority for the Legislature to prospectively adopt rules not yet promulgated by federal administrative bodies.<sup>17</sup> To address concerns regarding delegation of legislative authority, the bill provides for automatic repeal of Florida’s compact legislation three years after the bill takes effect, unless reauthorized by the Legislature. The repeal provision allows the Legislature to determine whether it agrees with any new compact rules or rule amendments adopted during the three year period and consider reauthorization of the compact. Reauthorizing the compact periodically accounts for any new compact rules and amendments adopted by the Commission since the last reauthorization, thereby diminishing a claim that the Legislature has agreed to be bound by compact rules not yet promulgated.

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<sup>17</sup> *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972); *Fla. Indus. Commission v. State ex rel. Orange State Oil Co.*, 21 So.2d 599, 603 (Fla. 1945).

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The compact authorizes the Commission to levy membership dues from each member state to finance Commission operations and staffing.<sup>18</sup> Membership dues are based upon \$1 per dependent child of active-duty military personnel residing in a member state.<sup>19</sup> According to the DOE, there are approximately 31,000 children of active-duty military personnel living in Florida.

Since enactment of the compact in 2008, the DOE has requested funding for dues annually in the legislative budget requests, but a specific appropriation for this purpose has not been provided.<sup>20</sup> The Department of Veterans Affairs paid the dues through Fiscal Year 2009-2010.<sup>21</sup> Membership dues for Fiscal Years 2010-2011 through 2012-2013 were paid by Enterprise Florida, Inc.<sup>22</sup>

The DOE's legislative budget request for Fiscal Year 2013-2014 requests a total of \$62,911 to fund membership dues. Of this amount, \$30,911 was requested to cover dues owed for Fiscal Year 2012-2013 and \$32,000 is requested to cover dues for Fiscal Year 2013-2014.<sup>23</sup> The \$30,911 amount for Fiscal Year 2012-2013 was paid subsequent to the agency budget request.

For Fiscal Year 2013-2014, the Governor's Recommended Budget for the State Board of Education includes \$32,000 for compact membership dues.<sup>24</sup> The Department of Defense has since notified the DOE that the Fiscal Year 2013-2014 membership dues will be \$42,813, \$10,813 greater than the \$32,000 amount requested by the agency and

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<sup>18</sup> Article XIV of the Compact, s. 1000.36, F.S.

<sup>19</sup> *Id.*; Section 2.104, Interstate Commission Rules. There is a minimum dues obligation of \$2,000 and a maximum of \$60,000.

<sup>20</sup> See, e.g., Florida Department of Education, *2010-2011 Operating Legislative Budget Request*, 208-209 (Sept. 2009), available at [http://www.fldoe.org/board/meetings/2009\\_09\\_15/2010-11OperatingLegislativeBudgetRequest.pdf](http://www.fldoe.org/board/meetings/2009_09_15/2010-11OperatingLegislativeBudgetRequest.pdf) [Requesting \$66,604 to fund dues for FYs 2009-10 (past-due) and 2010-11]; see, e.g., Florida Department of Education, *2012-13 Operating Legislative Budget Request*, 199-201 (August 2011), available at [http://www.fldoe.org/board/meetings/2011\\_08\\_23/fdoelbr.pdf](http://www.fldoe.org/board/meetings/2011_08_23/fdoelbr.pdf) [Requesting \$97,311 to cover dues for FYs 2010-11 (past-due), 2011-12 (past-due), and 2012-13].

<sup>21</sup> Department of Education, Senate Bill 138 Agency Legislative Bill Analysis (January 18, 2013). On file with the Senate Committee on Education.

<sup>22</sup> *Id.*

<sup>23</sup> Florida Department of Education, *2013-14 Operating Legislative Budget Request*, 184 (Oct. 2012), available at [http://www.fldoe.org/board/meetings/2012\\_10\\_09/lbr.pdf](http://www.fldoe.org/board/meetings/2012_10_09/lbr.pdf).

<sup>24</sup> <http://www.floridafamiliesfirst.com/content/Current/rptMain.htm>

recommended by the Governor.<sup>25</sup> The bill provides a recurring appropriation to the DOE in the amount of \$42,813 from the General Revenue Fund for Fiscal Year 2013-2014 for the dues.

**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.)

**CS by the Appropriations Committee on February 21, 2013:**

The committee substitute provides a recurring appropriation to the Department of Education in the amount of \$42,813 from the General Revenue Fund for the Fiscal Year 2013-2014 membership dues for the Interstate Commission on Educational Opportunity for Military Children.

- B. **Amendments:**

None.

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

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<sup>25</sup> Id.



876224

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/21/2013	.	
	.	
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	.	

The Committee on Appropriations (Benacquisto) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 17 and 18  
insert:

Section 3. The recurring sum of \$42,813 is appropriated from the General Revenue Fund to the Department of Education for the purpose of paying the state's dues to the Interstate Commission on Educational Opportunity for Military Children during the 2013-14 fiscal year.

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

And the title is amended as follows:



13           Delete line 8  
14 and insert:  
15           the compact; providing an appropriation; providing an  
16           effective date.

By Senator Brandes

22-00358-13

2013138\_\_

1                   A bill to be entitled  
2           An act relating to the Interstate Compact on  
3           Educational Opportunity for Military Children;  
4           repealing s. 3 of ch. 2010-52, Laws of Florida;  
5           abrogating the future repeal of ss. 1000.36, 1000.37,  
6           1000.38, and 1000.39, F.S., relating to the compact;  
7           providing for future legislative review and repeal of  
8           the compact; providing an effective date.

9  
10   Be It Enacted by the Legislature of the State of Florida:

11  
12           Section 1. Section 3 of chapter 2010-52, Laws of Florida,  
13 is repealed.

14           Section 2. Sections 1000.36, 1000.37, 1000.38, and 1000.39,  
15 Florida Statutes, shall stand repealed 3 years after the  
16 effective date of this act unless reviewed and saved from repeal  
17 through reenactment by the Legislature.

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



The Florida Senate

## Committee Agenda Request

SENATE APPROPRIATION  
RECEIVED

13 FEB -7 AM 10: 28

SENT TO: CHAIRMAN \_\_\_\_\_  
STAFF DIR. \_\_\_\_\_ STAFF \_\_\_\_\_

**To:** Senator Joe Negron, Chair  
Committee on Appropriations

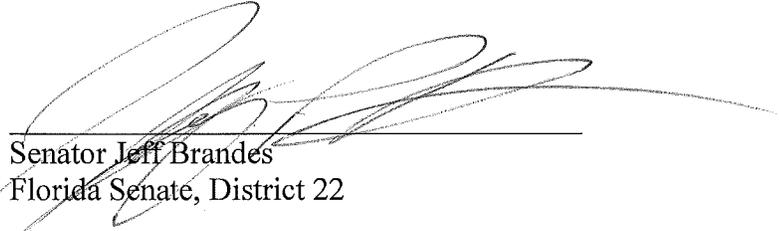
**Subject:** Committee Agenda Request

**Date:** February 6, 2013

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I respectfully request that **Senate Bill #138**, relating to Interstate Compact on Educational Opportunity for Military Children, be placed on the:

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



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Senator Jeff Brandes  
Florida Senate, District 22

Cc: Mike Hansen

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

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

Prepared By: The Professional Staff of the Committee on Appropriations

**BILL:** CS/SB 50

**INTRODUCER:** Governmental Oversight and Accountability Committee and Senator Negron

**SUBJECT:** Public Meetings

**DATE:** February 21, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	McVaney	GO	<b>Fav/CS</b>
2.	McSwain	Hansen	AP	<b>Favorable</b>
3.			RC	
4.				
5.				
6.				

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

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input 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 50 requires that members of the public be given a reasonable opportunity to be heard on a proposition before a board or commission of a state agency or local government. Such opportunity does not have to occur at the same meeting at which the board or commission takes official action if certain requirements are met. The bill excludes specified meetings and acts from the “right to speak” requirement.

The bill specifies that the section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. It authorizes a board or commission to adopt certain reasonable rules or policies governing the opportunity to be heard. If a board or commission adopts such rules or policies and thereafter complies with them, it is deemed to be acting in compliance with the section.

The fiscal impact of this bill is indeterminate. See Section V.

The bill authorizes a circuit court to issue injunctions for the purpose of enforcing the section upon the filing of an application for such injunction by any citizen of Florida. If an action is filed against a board or commission to enforce the provisions of the section and the court determines

that the board or commission violated the section, the bill requires the court to assess reasonable attorney fees against the appropriate state agency or local government board or commission. However, the bill also authorizes the court to assess reasonable attorney fees against the individual filing the action if the court finds that the action was filed in bad faith or was frivolous. The bill excludes specified public officers from its attorney fee provisions. A court is required by the bill to assess reasonable attorney fees if a board or commission appeals a court order finding that such board or commission violated the section and the order is affirmed.

The bill provides that any action taken by a board or commission that is found to be in violation of the section is not void as a result of such violation.

This bill creates section 286.0114, Florida Statutes.

## **II. Present Situation:**

### **Florida Constitution: Public Meetings**

The Florida Constitution requires all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.<sup>1</sup>

### **Government in the Sunshine Law**

Access to government meetings is also governed by the Florida Statutes. Section 286.011, F.S., also known as the “Government in the Sunshine Law” or “Sunshine Law,” requires all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken to be open to the public at all times. The board or commission must provide reasonable notice of all public meetings. Public meetings may not be held in certain locations that discriminate on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.<sup>2</sup> Minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded and be open to public inspection.<sup>3</sup>

### **Right to Speak at Public Meetings**

The Florida Constitution and the Florida Statutes are silent concerning whether citizens have a right to be heard at a public meeting. To date, Florida courts have heard two cases concerning whether a member of the public has a right to be heard at a meeting when he or she is not a party to the proceedings.

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<sup>1</sup> Article I, s. 24(b) of the Florida Constitution.

<sup>2</sup> Section 286.011(6), F.S.

<sup>3</sup> Section 286.011(2), F.S.

In *Keesler v. Community Maritime Park Associates, Inc.*,<sup>4</sup> the plaintiffs alleged that the Community Maritime Park Associates, Inc., (CMPA)<sup>5</sup> violated the Sunshine Law by not providing them the opportunity to speak at a public meeting concerning the development of certain waterfront property. The plaintiffs argued that the Sunshine Law phrase “open to the public” grants citizens the right to speak at public meetings, but the First District Court of Appeal held that no such right exists:

Relying on the language in *Marston*<sup>6</sup>, the trial court determined that, although the Sunshine Law requires that meetings be open to the public, the law does not give the public the right to speak at the meetings. Appellants have failed to point to any case construing the phrase “open to the public” to grant the public the right to speak, and in light of the clear and unambiguous language in *Marston* (albeit dicta), we are not inclined to broadly construe the phrase as granting such a right here.<sup>7</sup>

In the second case, *Kennedy v. St. Johns Water Management District*, the plaintiffs alleged, in part, that the St. Johns Water Management District violated the Sunshine Law by preventing certain people from speaking at a public meeting concerning the proposed approval of a water use permit.<sup>8</sup> There, the trial court held that, “Because, as clearly articulated in *Keesler*, the Sunshine Law does not require the public be allowed to speak, plaintiffs’ claim ... fails as a matter of law.”<sup>9</sup> The Fifth District Court of Appeal affirmed the trial court’s ruling.<sup>10</sup>

### III. Effect of Proposed Changes:

The bill creates s. 286.0114, F.S., providing that members of the public must be given a reasonable opportunity to be heard on a proposition before a board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision. The opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action on the proposition if such opportunity:

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<sup>4</sup> 32 So.3d 659 (Fla. 1<sup>st</sup> DCA 2010).

<sup>5</sup> The CMPA is a not-for-profit corporation charged by the City of Pensacola with overseeing the development of a parcel of public waterfront property. The CMPA did not dispute that it was subject to the requirements of the Sunshine Law. *Id.* at 660. A private entity is generally subject to public records and open meetings laws when 1) there has been a delegation of the public agency’s governmental functions; or 2) the private entity plays an integral part in the decision-making process of the public agency or has a significant level of involvement with the public agency’s performance of its duties. *See* Ops. Att’y Gen. Fla. 92-53 (1992) (direct support organization created for purpose of assisting public museum subject to s. 286.011, F.S.); 83-95 (1983) (where county accepted services of nongovernmental committee to recodify and amend county’s zoning laws, committee subject to Sunshine Law).

<sup>6</sup> In *Wood v. Marston*, the Florida Supreme Court held that the University of Florida improperly closed meetings of a committee charged with soliciting and screening applicants for the deanship of the university’s college of law. However, the *Marston* court noted “nothing in this decision gives the public the right to be more than spectators. The public has no authority to participate in or to interfere with the decision-making process.” *Wood v. Marston*, 442 So.2d 934, 941 (Fla. 1983).

<sup>7</sup> *Keesler*, *supra* note 3, at 660-61.

<sup>8</sup> The trial court was the Circuit Court of the Seventh Judicial Circuit, in and for Putnam County, Florida. *See* the trial court’s “Order Granting Motion for Summary Judgment,” September 28, 2010, at 1-3 (on file with the Governmental Oversight and Accountability Committee).

<sup>9</sup> *Id.* at 6.

<sup>10</sup> 2011 WL 5124949 (Fla. 5th DCA 2011).

- Occurs at a meeting that meets the same notice requirements as the meeting at which the board or commission takes official action on the item;
- Occurs at a meeting that is during the decision-making process; and
- Is within reasonable proximity in time before the meeting at which the board or commission takes the official action.

The bill specifies that the section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.

The opportunity to be heard does not apply to:

- An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, when compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
- An official act involving no more than a ministerial act;
- A meeting that is exempt from open meetings requirements; or
- Meetings in which the board or commission is acting in a quasi-judicial capacity. The bill specifies that this exclusion does not affect the right of a person to be heard as otherwise provided by law.

The bill authorizes a board or commission to adopt reasonable rules or policies governing the opportunity to be heard.<sup>11</sup> Such rules or policies must be limited to those that:

- Provide guidelines regarding the time an individual has to address the board or commission;
- Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
- Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard, to indicate his or her support, opposition, or neutrality on a proposition, and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
- Designate a specified period of time for public comment.

The bill provides that a board or commission is deemed to be acting in compliance with the new section if the board or commission adopts rules or policies in compliance with the section and follows such rules or policies when providing an opportunity to be heard.

The bill authorizes a circuit court to issue injunctions for the purpose of enforcing the new section upon the filing of an application for such injunction by any citizen of Florida.

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<sup>11</sup> Executive branch agencies that are subject to the Florida Administrative Procedure Act (ch. 120, F.S.) *must* adopt through the rulemaking process (s. 120.54, F.S.) any agency statement defined as a rule by s. 120.52, F.S. Section 120.52(16), F.S., defines “rule” to mean each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.

Whenever an action is filed against a board or commission to enforce the provisions of this section, the bill requires the court to assess reasonable attorney fees against the appropriate state agency or local government board or commission if the court determines that the defendant to such action acted in violation of the section. The bill also authorizes the court to assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. These attorney fee provisions do not apply to a state attorney, to his or her duly authorized assistants, or to an officer charged with enforcing the provisions of the act. The bill also requires a court to assess reasonable appellate attorney fees if a board or commission appeals any court order which has found such board or commission to have violated the section and the order is affirmed.

The bill specifies that any action taken by a board or commission that is found to be in violation of the section is not void as a result of such violation.

The bill's effective date is October 1, 2013.

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

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

The county/municipality mandates provision of s. 18, Art. VII of the Florida Constitution may apply because this bill could cause counties and municipalities to incur additional expenses associated with longer meetings or increased meetings due to the new requirement that the public be provided with the opportunity to speak at such meetings.<sup>12</sup> An exemption may apply, however, if the bill has an insignificant fiscal impact. If an exemption does not apply, an exception may still apply if the bill articulates a finding of serving an important state interest and applies to all persons similarly situated. The bill contains a legislative finding of important state interest and applies to boards and commissions of all state agencies and authorities and all agencies and authorities of counties, municipal corporations, and political subdivisions; therefore, it appears to apply to all persons similarly situated.

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

None.

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<sup>12</sup> Article VII, s. 18(a) of the Florida Constitution provides that no county or municipality may be bound by any general law that mandates it to spend funds or take an action requiring the expenditure of funds unless the Legislature determines that such law fulfills an important state interest *and* one of specified other requirements are met. The other specified requirements are:

- Funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure;
- The Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of each such county or municipality;
- The law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; *or*
- The law is required to either comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance. *Id.*

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Governmental entities may incur additional meeting related expenses because longer meetings may be required when considering items of great public interest. The amount of those potential expenses is indeterminate and will vary depending on the magnitude of each issue and the specific associated meeting requirements.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:****Rulemaking**

The constitutional separation of powers doctrine<sup>13</sup> prevents the Legislature from delegating its constitutional duties.<sup>14</sup> Because legislative power involves the exercise of policy-related discretion over the content of law,<sup>15</sup> any discretion given an executive branch agency to implement a law must be “pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.”<sup>16</sup> Although the bill authorizes, but does not require, state agency boards and commissions to adopt certain rules or policies, executive branch agencies are required to adopt as a rule a statement of general applicability that implements law or policy and that imposes a requirement not specifically required by statutes or existing rule.<sup>17</sup> The bill prescribes the items that such rules or policies may address.

Boards and commissions subject to the state Administrative Procedure Act<sup>18</sup> must comply with the rulemaking procedures set forth in that chapter. Generally, rulemaking pursuant to those procedures takes a minimum of 90 days.<sup>19</sup>

<sup>13</sup> Article II, s. 3 of the Florida Constitution.

<sup>14</sup> See *Florida State Bd. of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979).

<sup>15</sup> See *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719 (Fla. 1937).

<sup>16</sup> See *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).

<sup>17</sup> See note 11.

<sup>18</sup> Chapter 120, F.S. The chapter applies to any “agency” as defined in s. 120.52(1), F.S.

<sup>19</sup> See s. 120.54, F.S.

## Other Comments

The bill does not define the terms “proposition,” “reasonable proximity,” “ministerial act,” “factions,” and “groups.”

The bill does not specify what is considered an “unreasonable delay” when deciding if the public’s opportunity to be heard should be usurped.

It is unclear whether a state board’s or commission’s denial of someone’s right to speak may constitute an agency action challengeable under the Administrative Procedure Act. In cases in which an administrative remedy is available, a plaintiff may be required to exhaust all administrative remedies before pursuing a civil remedy.<sup>20</sup>

As currently drafted, each state or local board or commission is authorized to create its own rules or policies governing the right to speak. Allowing each state board or commission to create its own rules allows it to tailor its rules to its needs, but may not provide as much ease of use by the public as would uniform rules created by an entity such as the Administration Commission.

The bill specifies that a circuit court may issue injunctions to enforce the provisions of the act. It is unclear whether this could be interpreted to exclude civil remedies other than injunctions and the attorney fees also explicitly authorized by the bill.

## 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 Governmental Oversight and Accountability on February 6, 2013:**

The CS differs from the original bill in that it:

- Creates a definition for “board or commission” for drafting clarity. The substance of the definition is pulled from the original bill.
- Clarifies that an opportunity to speak must occur at a meeting that is within reasonable proximity in time to the meeting at which the board or commission takes official action on the proposition.
- Specifies that the section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.
- Changes the term “item” to “proposition” throughout the bill for conformity.
- Deletes the phrase “with respect to the rights or interests of a person” from (3)(d) to prevent confusion over whom or what constitutes a “person.”
- Clarifies that the restrictions on rules and policies apply only to those governing the opportunity to be heard.
- Rephrases (4)(a), relating to specifying a limit on the time an individual has to address a board or commission, to provide more flexibility by instead specifying that a board or commission may provide guidelines relating to the time an individual may speak.

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<sup>20</sup> See, for example, *Orange County, Fla. v. Game and Fresh Water Fish Commission*, 397 So.2d 411 (Fla. 5th DCA 1981).

- Rephrases (4)(b), relating to requiring a selection of a representative of a group or faction, to provide more flexibility by instead specifying that a board or commission may prescribe procedures for allowing representatives of a group or faction to address the board or commission.
- Replaces the phrase “it is presumed that” in (5) with “is deemed to be” to prevent confusion about whether the subsection is creating a rebuttable legal presumption.
- Relocates the authorization of a circuit court to issue injunctions before the attorney fee provisions for drafting clarity.
- Replaces the authorization of the circuit courts to issue injunctions with a circuit court for drafting clarity.
- Authorizes attorney fees at the appellate level in addition to at the circuit court level if a board or commission is found to have violated the section.
- Replaces references within the bill to “the act” with “the section” for clarity.
- Adds a finding of important state interest.
- Changes the bill’s effective date to from July 1, 2013 to October 1, 2013 to allow boards and commissions subject to ch. 120, F.S., to promulgate rules.

**B. Amendments:**

None.

By the Committee on Governmental Oversight and Accountability;  
and Senators Negron and Evers

585-01573-13

201350c1

1 A bill to be entitled  
2 An act relating to public meetings; creating s.  
3 286.0114, F.S.; defining "board or commission";  
4 requiring that a member of the public be given a  
5 reasonable opportunity to be heard by a board or  
6 commission before it takes official action on a  
7 proposition; providing exceptions; establishing  
8 requirements for rules or policies adopted by the  
9 board or commission; providing that compliance with  
10 the requirements of this section is deemed to have  
11 occurred under certain circumstances; providing that a  
12 circuit court has jurisdiction to issue an injunction  
13 under certain circumstances; authorizing a court to  
14 assess reasonable attorney fees in actions filed  
15 against a board or commission; providing that an  
16 action taken by a board or commission which is found  
17 in violation of this section is not void; providing  
18 that the act fulfills an important state interest;  
19 providing an effective date.

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

22  
23 Section 1. Section 286.0114, Florida Statutes, is created  
24 to read:

25 286.0114 Public meetings; reasonable opportunity to be  
26 heard; attorney fees.-

27 (1) For purposes of this section, "board or commission"  
28 means a board or commission of any state agency or authority or  
29 of any agency or authority of a county, municipal corporation,

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201350c1

30 or political subdivision.  
31 (2) Members of the public shall be given a reasonable  
32 opportunity to be heard on a proposition before a board or  
33 commission. The opportunity to be heard need not occur at the  
34 same meeting at which the board or commission takes official  
35 action on the proposition if the opportunity occurs at a meeting  
36 that satisfies the same notice requirements as the meeting at  
37 which the board or commission takes official action on the  
38 proposition, occurs at a meeting that is during the  
39 decisionmaking process, and is within reasonable proximity in  
40 time before the meeting at which the board or commission takes  
41 the official action. This section does not prohibit a board or  
42 commission from maintaining orderly conduct or proper decorum in  
43 a public meeting. The opportunity to be heard is subject to  
44 rules or policies adopted by the board or commission, as  
45 provided in subsection (4).  
46 (3) The requirements in subsection (2) do not apply to:  
47 (a) An official act that must be taken to deal with an  
48 emergency situation affecting the public health, welfare, or  
49 safety, when compliance with the requirements would cause an  
50 unreasonable delay in the ability of the board or commission to  
51 act;  
52 (b) An official act involving no more than a ministerial  
53 act;  
54 (c) A meeting that is exempt from s. 286.011; or  
55 (d) A meeting during which the board or commission is  
56 acting in a quasi-judicial capacity. This paragraph does not  
57 affect the right of a person to be heard as otherwise provided  
58 by law.

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59 (4) Rules or policies of a board or commission which govern  
 60 the opportunity to be heard are limited to those that:

61 (a) Provide guidelines regarding the amount of time an  
 62 individual has to address the board or commission;

63 (b) Prescribe procedures for allowing representatives of  
 64 groups or factions on a proposition to address the board or  
 65 commission, rather than all members of such groups or factions,  
 66 at meetings in which a large number of individuals wish to be  
 67 heard;

68 (c) Prescribe procedures or forms for an individual to use  
 69 in order to inform the board or commission of a desire to be  
 70 heard; to indicate his or her support, opposition, or neutrality  
 71 on a proposition; and to indicate his or her designation of a  
 72 representative to speak for him or her or his or her group on a  
 73 proposition if he or she so chooses; or

74 (d) Designate a specified period of time for public  
 75 comment.

76 (5) If a board or commission adopts rules or policies in  
 77 compliance with this section and follows such rules or policies  
 78 when providing an opportunity for members of the public to be  
 79 heard, the board or commission is deemed to be acting in  
 80 compliance with this section.

81 (6) A circuit court has jurisdiction to issue an injunction  
 82 for the purpose of enforcing this section upon the filing of an  
 83 application for such injunction by a citizen of this state.

84 (7) (a) Whenever an action is filed against a board or  
 85 commission to enforce this section, the court shall assess  
 86 reasonable attorney fees against such board or commission if the  
 87 court determines that the defendant to such action acted in

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201350c1

88 violation of this section. The court may assess reasonable  
 89 attorney fees against the individual filing such an action if  
 90 the court finds that the action was filed in bad faith or was  
 91 frivolous. This paragraph does not apply to a state attorney or  
 92 his or her duly authorized assistants or an officer charged with  
 93 enforcing this section.

94 (b) Whenever a board or commission appeals a court order  
 95 that has found the board or commission to have violated this  
 96 section, and such order is affirmed, the court shall assess  
 97 reasonable attorney fees for the appeal against such board or  
 98 commission.

99 (8) An action taken by a board or commission which is found  
 100 to be in violation of this section is not void as a result of  
 101 that violation.

102 Section 2. The Legislature finds that a proper and  
 103 legitimate state purpose is served when members of the public  
 104 have been given a reasonable opportunity to be heard on a  
 105 proposition before a board or commission of a state agency or  
 106 authority, or of an agency or authority of a county, municipal  
 107 corporation, or political subdivision. Therefore, the  
 108 Legislature determines and declares that this act fulfills an  
 109 important state interest.

110 Section 3. This act shall take effect October 1, 2013.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/21/13  
Meeting Date

Topic \_\_\_\_\_ Bill Number CS/SB 50  
(if applicable)

Name Christopher Maurer Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title President of Treasure Coast Delegation Youth in Govt

Address 2302 Atapha Nene Phone 954-675-0905  
Street

Tallahassee FL E-mail \_\_\_\_\_  
City State Zip

Speaking:  For  Against  Information

Representing Treasure Coast Delegation

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.*

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/21/2013

Meeting Date

Topic Public Meetings

Bill Number SB 50  
*(if applicable)*

Name MARILYNN WILLS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title 2nd V.P. League of Women Voters of Florida

Address 2326 KILKENNY DRIVE WEST

Phone 850 893-4104

Street

TALLAHASSEE FL 32309

City

State

Zip

E-mail marilynn.wills@msn.com

Speaking:  For  Against  Information

Representing League of Women Voters 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)

# CourtSmart Tag Report

Room: KN 412

Case:

Type:

Caption: Senate Appropriations Committee

Judge:

Started: 2/21/2013 3:01:34 PM

Ends: 2/21/2013 3:12:26 PM

Length: 00:10:53

3:01:36 PM Sen. Negron (Chair)  
3:03:10 PM S 138  
3:03:20 PM Sen. Brandes  
3:03:50 PM Sen. Negron  
3:03:52 PM Am. 876224  
3:03:53 PM Sen. Benacquisto  
3:04:10 PM Sen. Negron  
3:06:05 PM Sen. Benacquisto  
3:06:14 PM S 50  
3:06:15 PM Sen. Negron  
3:06:39 PM Sen. Benacquisto  
3:06:50 PM Marilyn Wills, 2nd V.P., League of Women Voters of Florida  
3:08:02 PM Sen. Benacquisto  
3:08:17 PM Christopher Maurer, President, Treasure Coast Delegation Youth in Government  
3:08:54 PM Sen. Benacquisto  
3:08:57 PM Sen. Galvano  
3:09:25 PM Sen. Negron  
3:09:38 PM Sen. Benacquisto  
3:09:42 PM Sen. Bradley  
3:10:00 PM Sen. Negron  
3:10:10 PM Sen. Benacquisto  
3:11:09 PM Sen. Negron  
3:11:19 PM Sen. Margolis  
3:11:30 PM Sen. Negron  
3:11:33 PM Sen. Richter  
3:11:43 PM Sen. Negron  
3:12:17 PM Sen. Bradley  
3:12:19 PM Sen. Negron  
3:12:27 PM



**THE FLORIDA SENATE**

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on Health and Human Services, *Chair*  
Agriculture  
Appropriations  
Appropriations Subcommittee on Criminal and Civil Justice  
Children, Families, and Elder Affairs  
Environmental Preservation and Conservation  
Health Policy

**SELECT COMMITTEE:**  
Select Committee on Patient Protection and Affordable Care Act

**SENATOR DENISE GRIMSLEY**  
21st District

February 19, 2013

The Honorable Joe Negron  
Florida Senate  
412 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Chair Negron,

I am writing to request permission to be excused from the Appropriations Committee meeting to be held on Thursday, February 21, 2013. I have a prior obligation back in the district that I need to attend. Thank you for your consideration.

Sincerely,

Denise Grimsley  
District 21

  
2/20/13

Cc: Mike Hansen, Staff Director  
Senate Appropriations

Debbie Brown, Secretary of the Senate

SENATE APPROPRIATIONS  
RECEIVED  
13 FEB 20 AM 10: 22  
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STAFF DIR. STAFF

REPLY TO:  
 205 South Commerce Avenue, Suite A, Sebring, Florida 33870  
 212 East Stuart Avenue, Lake Wales, Florida 33853  
 306 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

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

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore