

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Simpson, Chair
Senator Thompson, Vice Chair

MEETING DATE: Tuesday, February 4, 2014
TIME: 2:00 —4:00 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Simpson, Chair; Senator Thompson, Vice Chair; Senators Bradley, Hukill, Latvala, Smith, Soto, Stargel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 372 Galvano (Similar H 241)	Developments of Regional Impact; Deleting certain exemptions for dense urban land areas; revising the exemption for any proposed development within a county that has a population of at least 300,000 and an average population of at least 400 people per square mile, etc. CA 02/04/2014 Favorable ATD AP RC	Favorable Yeas 8 Nays 0
2	CS/SB 230 Transportation / Simmons (Similar H 311)	Orlando-Orange County Expressway Authority; Renaming the Orlando-Orange County Expressway System as the "Central Florida Expressway System"; providing for the transfer of governance and control, legal rights and powers, responsibilities, terms, and obligations to the authority; extending, to 99 years from 40 years, the term of a lease-purchase agreement; limiting the authority's authority to enter into a lease-purchase agreement; removing the authority and criteria for an authority to waive payment and performance bonds for certain public works projects that are awarded pursuant to an economic development program, etc. TR 01/09/2014 Fav/CS CA 02/04/2014 Favorable AP	Favorable Yeas 8 Nays 0
3	CS/SB 236 Education / Richter (Compare CS/H 137)	Renaming of Florida College System Institutions; Renaming Edison State College and Pasco-Hernando Community College as "Florida SouthWestern State College" and "Pasco-Hernando State College," respectively, etc. ED 01/14/2014 Fav/CS CA 02/04/2014 Favorable	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, February 4, 2014, 2:00 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 262 Abruzzo (Identical CS/H 17, Compare CS/H 19, Link S 350)	Motorist Safety; Authorizing the governing body of a county to create a yellow dot critical motorist medical information program for certain purposes; requiring the program to be free to participants; providing for limited use of information on the forms by emergency medical responders; limiting liability of emergency medical responders in certain circumstances, etc. TR 01/09/2014 Favorable CA 02/04/2014 Fav/CS	Fav/CS Yeas 9 Nays 0
5	SB 482 Hays (Identical H 391, Compare S 610)	Florida Hurricane Catastrophe Fund; Providing and phasing in a reduction in the fund's coverage limits for reimbursement contracts; authorizing an insurer to recoup certain reinsurance payments paid to cover a potential gap in the fund's claims-paying capacity; deleting a provision prohibiting the recoupment of certain other reinsurance costs, etc. CA 02/04/2014 Favorable BI AP	Favorable Yeas 9 Nays 0
6	CS/SB 380 Health Policy / Bean (Compare H 373)	Obstetrical Services at Hospitals; Repealing provisions relating to provider hospitals; requiring a hospital to notify obstetrical physicians before the hospital closes its obstetrical department or ceases to provide obstetrical services, etc. HP 01/08/2014 Fav/CS CA 02/04/2014 Fav/CS	Fav/CS Yeas 8 Nays 0
7	SB 388 Bean (Identical H 117)	Public Retirement Plans; Providing that a consolidated government that has entered into an interlocal agreement to provide police protection services to a municipality within its boundaries is eligible to receive the premium taxes reported for the municipality under certain circumstances; authorizing the municipality receiving the police protection services to enact an ordinance levying the tax as provided by law, etc. GO 01/16/2014 Favorable CA 02/04/2014 Favorable AFT AP	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, February 4, 2014, 2:00 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 356 Thrasher (Identical H 307)	Regulation of Public Lodging Establishments and Public Food Service Establishments; Deleting the restriction preventing local laws, ordinances, or regulations from regulating the use of vacation rentals based solely on their classification, use, or occupancy, etc. RI 01/09/2014 Favorable CA 02/04/2014 Favorable	Favorable Yeas 7 Nays 1
9	SB 220 Thompson (Similar CS/H 105)	Florida Civil Rights Act; Prohibiting discrimination on the basis of pregnancy in public lodging and food service establishments; prohibiting discrimination with regard to employment benefits; prohibiting discrimination on the basis of pregnancy by labor organizations, joint labor-management committees, and employment agencies; prohibiting discrimination on the basis of pregnancy in occupational licensing, certification, and membership organizations, etc. CM 12/09/2013 Favorable JU 01/14/2014 Favorable CA 02/04/2014 Fav/CS	Fav/CS Yeas 6 Nays 0
10	CS/SB 272 Communications, Energy, and Public Utilities / Simpson	Water and Wastewater Utilities; Authorizing the Florida Public Service Commission to suspend or revoke a certificate of authorization upon receipt of a petition; providing criteria for such petition; requiring the commission to consider the quality of water or wastewater service when fixing rates; providing criteria that the commission must consider in making its determination; requiring the utility to meet with its customers to discuss the costs and benefits of plausible solutions if the commission finds that the utility has failed to meet certain water or wastewater quality standards, etc. CU 01/14/2014 Fav/CS CA 02/04/2014 Fav/CS	Fav/CS Yeas 6 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 Community Affairs

BILL: SB 372

INTRODUCER: Senator Galvano

SUBJECT: Developments of Regional Impact

DATE: January 24, 2014 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	Favorable
2.			ATD	
3.			AP	
4.			RC	

I. Summary:

SB 372 reduces the minimum population and density requirements for counties to qualify as a dense urban land area (DULA). Land development projects are exempt from development of regional impact (DRI) review if they are located in a DULA. This bill would designate an additional 7 counties and 20 municipalities as DULAs.

The bill also eliminates the adoption of an urban service area as criteria for designation for a DULA.

II. Present Situation:

Development of Regional Impact Background

A development of regional impact is defined in s. 380.06, F.S., as “any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.” Section 380.06, F.S., provides for both state and regional review of local land use decisions involving DRIs. Regional Planning Councils (RPCs) coordinate the review process with local, regional, state and federal agencies and recommend conditions of approval or denial to local governments. DRIs are also reviewed by the Department of Economic Opportunity (DEO) for compliance with state law and to identify the regional and state impacts of large-scale developments. Local DRI development orders may be appealed by the owner, the developer, or the state land planning agency to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.¹ Section 380.06(24), F.S., exempts numerous types of projects from review as a DRI.

¹ Section 380.07(2), F.S.

The DRI program was initially created in 1972. Since that time, the state has required all local governments to adopt local comprehensive plans. The Environmental Land Management Study Committee (ELMS III) in 1992 recommended that the DRI program be eliminated in the largest local governments and relegated to an enhanced version of the intergovernmental coordination element (ICE) in their local plans.² After much controversy, this recommendation never fully came to fruition and the DRI program continued. The Legislature has made changes to the DRI program in the past for various reasons.

DRI Review

All developments that meet the DRI thresholds and standards provided by statute³ and rules adopted by the Administration Commission⁴ are required to undergo DRI review, unless the Legislature has provided an exemption, the development is located within a DULA, or is located in a planning area receiving a legislative exemption such as a sector plan or rural land stewardship area.⁵ The types of developments required to undergo DRI review upon meeting the specified thresholds and standards include certain airports, attraction and recreation facilities, office development, retail and service development, multiuse development, residential development, schools, and recreational vehicle development.⁶ The state land planning agency, a RPC, or the local government may request the Administration Commission to increase or decrease the thresholds for part of the local government's jurisdiction or for the entire jurisdiction.⁷ Over the years, the Legislature also has increased the thresholds that determine which projects are subject to DRI review.

Florida's 11 RPCs coordinate the multi-agency review of proposed DRIs. RPCs are recognized as Florida's only multipurpose regional entity that plans for and coordinates intergovernmental solutions to growth-related problems on greater-than-local issues, provides technical assistance to local governments, and meets other needs of the communities in each region.⁸ A DRI review begins by the developer contacting the RPC with jurisdiction over the proposed development to arrange a pre-application conference.⁹ A developer or the RPC may also request other affected state and regional agencies to participate in the conference and to help identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures. At the pre-application conference, the RPC is to provide the developer with information about the DRI process and use the pre-application conference to identify issues, coordinate appropriate state and local agency requirements, and otherwise efficiently review the proposed development.

An agreement may also be reached between the RPC and the developer regarding assumptions and methodology to be used in the application for development approval, and if an agreement is reached, the reviewing agencies may not later object to the agreed upon assumptions and

² See Richard G. Rubino and Earl M. Starnes, *Lessons Learned? The History of Planning in Florida*. Tallahassee, FL: Sentry Press, 2008. ISBN 978-1-889574-31-8.

³ Section 380.0651, F.S.

⁴ Rule 28-24, F.A.C.

⁵ See the section "DRI Exemptions."

⁶ Section 380.0651, F.S.

⁷ Section 380.06(3), F.S.

⁸ Section 186.502, F.S.

⁹ Section 380.06(7), F.S.

methodologies unless the project changes or subsequent information makes the assumptions or methodologies no longer relevant. In an effort to reduce paperwork, discourage unnecessary gathering of data, and to coordinate federal, state, and local environmental reviews with the DRI review process, s. 380.06(7)(b), F.S., provides that the developer may enter into a binding written agreement with the RPC to eliminate certain questions from the application for development approval when those questions are found to be unnecessary for DRI review. The reviewing agencies may make only recommendations or comments regarding a proposed development which are consistent with the statutes, rules, or adopted local government ordinances that are applicable to developments in the jurisdiction where the proposed development is located.¹⁰

The RPC also assists with technical planning aspects of the project, which can be beneficial to rural local governments that often have smaller planning staffs. Upon completion of the pre-application conference with all parties, the developer then files an application for development approval with the local government, RPC, and the state land planning agency. The RPC reviews the application for sufficiency and may request additional information (no more than twice) if the application is deemed insufficient.¹¹

Once the RPC determines the application is sufficient or the developer declines to provide additional information, the local government must hold a public hearing on the application for development within 90 days, and must publish notice at least 60 days in advance of the hearing.¹² Within 50 days after receiving notice of the public hearing, the RPC is required to prepare and submit to the local government a report and recommendations on the regional impact of the proposed development.¹³ The RPC is required to identify regional issues¹⁴ specifically examining the extent to which:

- the development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state (state comprehensive plan) or regional (strategic regional policy plan) plans;
- the development will significantly impact adjacent jurisdictions; and
- in reviewing the first two issues, whether the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.¹⁵

¹⁰ *Id.*

¹¹ Section 380.06(10), F.S.

¹² Section 380.06(11), F.S.

¹³ Section 380.06(12), F.S.

¹⁴ Rule 73C-40.024, F.A.C., states in part: “In preparing the regional report, the regional planning agency shall identify and make recommendations on regional issues. Regional issues to be used in reviewing DRI applications are included in the applicable local government comprehensive plans, the Development of Regional Impact Uniform Standards Rule, the State Comprehensive Plan, and Sections 380.06(12)(a)1., 2., and 3., Florida Statutes. In addition, Strategic Regional Policy Plans adopted by regional planning councils pursuant to Sections 186.507 and .508, Florida Statutes, are a long-range policy guide for the development of the region and shall be used as the basis for regional review of DRIs. The regional planning agency may also identify and make recommendations on other local issues. However, local issues shall not be grounds for or be included as issues in a regional planning agency recommendation for appeal of a local government development order.”

¹⁵ Section 380.06(12)(a), F.S.

Other appropriate agencies may also review the proposed development and prepare reports and recommendations on issues within their jurisdiction. These reports become part of the RPC's report, but the RPC may attach dissenting views.¹⁶ When water management district and Department of Environmental Protection permits have been issued pursuant to ch. 373, F.S., or ch. 403, F.S., the RPC may comment on the regional implications of the permits but may not offer conflicting recommendations.¹⁷

The state land planning agency also reviews DRIs for compliance with state laws and to identify regional and state impacts and to make recommendations to local governments for approving, not approving, or suggesting mitigation conditions.¹⁸ Rule 73C-40, F.A.C., provides the rules of procedure and practice pertaining to DRIs. These rules provide detailed guidelines for how the state land planning agency evaluates the development's impact on:

- hurricane preparedness;¹⁹
- conservation of listed plan and wildlife resources;²⁰
- treatment of archaeological and historical resources;²¹
- hazardous material usage, potable water, wastewater, and solid waste facilities;²²
- transportation;²³
- air quality;²⁴ and
- adequate housing.²⁵

At the local public hearing on the proposed DRI, concurrent comprehensive plan amendments associated with the proposed DRI must be heard as well. When considering whether the development must be approved, denied, or approved subject to conditions, restrictions, or limitations, the local government considers the extent to which:

- the development is consistent with its comprehensive plan and land development regulations;
- the development is consistent with the report and recommendations of the RPC; and
- the development is consistent with the state comprehensive plan.²⁶

Local governments are required by s. 163.3177(6)(f), F.S., to adopt a housing element in the local comprehensive plan that expresses principles, guidelines, standards, and strategies related to affordable housing for all current and anticipated future residents.

¹⁶ Section 380.06(12)(b), F.S.

¹⁷ *Id.*

¹⁸ See Senate Interim Report 2012-114, *The Development of Regional Impact Process*, Sep. 2011.

¹⁹ Rule 73C-40.0256, F.A.C.

²⁰ Rule 73C-40.041, F.A.C.

²¹ Rule 73C-40.043, F.A.C.

²² Rule 73C-40.044, F.A.C.

²³ Rule 73C-40.045, F.A.C.

²⁴ Rule 73C-40.046, F.A.C.

²⁵ Rule 73C-40.048, F.A.C.

²⁶ Section 380.06(13), F.S. DRIs located in areas of critical state concern (ACSC) must also comply with the land development regulations in s. 380.05, F.S.

Within 30 days of the public hearing on the application for development, the local government must render a decision on the application. Within 45 days after a development order is rendered, the owner or developer of the property or the state land planning agency may appeal the order to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.²⁷ An “aggrieved or adversely affected party” may appeal and challenge the consistency of a development order with the local comprehensive plan.²⁸

Substantial Deviations

DRIs are designed to be built out over many years, which increases the likelihood of necessary changes to the development due to changing market conditions or other reasons. When a developer proposes a change to a previously approved development that creates a reasonable likelihood of additional regional impact, or creates a reasonable likelihood of a regional impact not previously reviewed by the RPC, a substantial deviation exists and the proposed change is required to be subject to further DRI review. If a change qualifies as a substantial deviation and there is no exemption, a notice of proposed change must be made to the RPC and the state land planning agency.²⁹ The notice must include a description of previous individual changes made to the development, including changes previously approved by the local government, and must include appropriate amendments to the development order.³⁰

Section 380.06(19), F.S., provides the specific criteria that constitutes a substantial deviation and causes a development to be subject to additional review.³¹ The numerical standards are also automatically increased if a project is a job-creating one or is located wholly within an urban infill and redevelopment area. During the 2011 Session, the Legislature increased the substantial deviation standards by approximately 50 percent for attraction or recreational facilities, office development, and commercial development.³² Section 380.06(19), F.S., also specifies changes that individually or cumulatively with any previous changes are not substantial deviations.

DRI Exemptions

The Legislature has exempted many types of development from DRI review.³³ The Legislature has also exempted projects from DRI review within certain counties and municipalities that qualify as a DULA.³⁴ There are currently eight counties and 242 cities that meet, or have met, the

²⁷ Section 380.07(2), F.S.

²⁸ Section 163.3215, F.S.

²⁹ Section 380.06(19)(e)1., F.S.

³⁰ *Id.*

³¹ Among the changes that constitute a substantial deviation include a decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less (s. 380.06(19)(b)8., F.S.); a 15 percent increase in the number of external vehicle trips generated by the development above that which was projected during the original DRI review (s. 380.06(19)(b)10., F.S.); and any change which would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. ss. 668a-668d, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State (s. 380.06(19)(b)11., F.S.).

³² Ch. 2011-139, L.O.F.; HB 7207 (2011).

³³ See 380.06(24), F.S.; ch. 2011-139, L.O.F., exempted from DRI review- movie theaters; industrial plants, industrial parks, and distribution, warehousing or wholesaling facilities; and hotel or motel development.

³⁴ Section 380.06(29), F.S. (see section Dense Urban Land Areas).

population and density criteria necessary to qualify as a DULA.³⁵ The exemption for projects within a DULA reflects state policy to encourage development within urban areas and the increased sophistication of local staffs and the progress, since the DRI program was instituted in 1972, which larger, urban counties and municipalities have made in the area of large-scale land use planning. Additionally, the Legislature has also provided two alternative large-scale planning tools known as the sector plan³⁶ and rural land stewardship program.³⁷ Large scale projects within a sector plan or rural land stewardship area are exempt from DRI review.

Dense Urban Land Areas

Under current law the following are exempt from DRI review as DULAs:

- Any proposed development in a municipality that has an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;
- Any proposed development within a county, including the municipalities located in the county, that has an average of at least 1,000 people per square mile of land area and is located within an urban service area as defined in s. 163.3164, F.S., which has been adopted into the comprehensive plan;
- Any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, that has an average of at least 1,000 people per square mile of land area, but which does not have an urban service area designated in the comprehensive plan; or
- Any proposed development within a county, including the municipalities located therein, which has a population of at least 1 million and is located within an urban service area as defined in s. 163.3164, F.S., which has been adopted into the comprehensive plan.

The Office of Economic and Demographic Research (EDR) within the Legislature annually calculates the population and density criteria needed to determine which jurisdictions meet the density criteria to be a DULA by using the most recent land area data from the decennial census conducted by the Bureau of the Census of the United States Department of Commerce and the latest available population estimates from EDR.

III. Effect of Proposed Changes:

Section 1 amends s. 380.06(29), F.S., by first deleting two of the current criteria for the DULA exemption. One of the exemptions being eliminated would be any proposed development within a county, including the municipalities located in the county, that has an average of at least 1,000 people per square mile of land area and is located within an urban service area. The second exemption being deleted would be for any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, that has an average of at least 1,000 people per square mile of land area, but which does not have an urban service area designated in the comprehensive plan.

³⁵ The following counties currently qualify as a DULA: Broward, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach, Pinellas, and Seminole. For a complete list of municipalities qualifying as a DULA see <http://edr.state.fl.us/Content/local-government/reports/DULA-21June2013.pdf> (last accessed January 2, 2014).

³⁶ Section 163.3245, F.S.

³⁷ Section 163.3248, F.S.

This section of the bill also revises the criteria of a DULA exemption so that it would apply to any proposed development within a county that has a population of at least 300,000 and an average population of at least 400 people per square mile. Under the existing criteria for a local government to be considered a DULA, eight counties and 242 municipalities are designated. The revised language in the bill would designate an additional seven counties as DULAs, for a total of 15 counties.³⁸ The municipalities located within a county that meets that criteria are also designated as DULAs. As a result, twenty additional municipalities would be designated, for a total of 262 municipalities.

The bill also makes a technical change to the name of the United States Census Bureau.

Section 2 provides an effective date of July 1, 2014.

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:

This bill may allow for more developments to be exempt from the DRI review process, thus reducing costs for developers who wish to pursue these types of developments.

C. Government Sector Impact:

Indeterminate, but expected to be minimal. Increasing the number of local governments who are exempt from the DRI review process might reduce the workload on the staffs who review these projects.

³⁸ The seven additional counties are: Brevard, Escambia, Lee, Manatee, Pasco, Sarasota, and Volusia.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 380.06 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Galvano

26-00410A-14

2014372__

1 A bill to be entitled
 2 An act relating to developments of regional impact;
 3 amending s. 380.06, F.S.; deleting certain exemptions
 4 for dense urban land areas; revising the exemption for
 5 any proposed development within a county that has a
 6 population of at least 300,000 and an average
 7 population of at least 400 people per square mile;
 8 providing an effective date.

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

11
 12 Section 1. Paragraph (a) of subsection (29) of section
 13 380.06, Florida Statutes, is amended to read:

14 380.06 Developments of regional impact.—

15 (29) EXEMPTIONS FOR DENSE URBAN LAND AREAS.—

16 (a) The following are exempt from this section:

17 1. Any proposed development in a municipality that has an
 18 average of at least 1,000 people per square mile of land area
 19 and a ~~minimum~~ total population of at least 5,000; or

20 ~~2. Any proposed development within a county, including the~~
 21 ~~municipalities located in the county, that has an average of at~~
 22 ~~least 1,000 people per square mile of land area and is located~~
 23 ~~within an urban service area as defined in s. 163.3164 which has~~
 24 ~~been adopted into the comprehensive plan;~~

25 ~~3. Any proposed development within a county, including the~~
 26 ~~municipalities located therein, which has a population of at~~
 27 ~~least 900,000, that has an average of at least 1,000 people per~~
 28 ~~square mile of land area, but which does not have an urban~~
 29 ~~service area designated in the comprehensive plan; or~~

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2014372__

30 ~~2.4.~~ Any proposed development within a county, including
31 the municipalities located therein, which has an average
32 population of at least 400 people per square mile and a
33 population of at least 300,000 ~~1 million and is located within~~
34 ~~an urban service area as defined in s. 163.3164 which has been~~
35 ~~adopted into the comprehensive plan.~~

36
37 The Office of Economic and Demographic Research within the
38 Legislature shall annually calculate the population and density
39 criteria needed to determine which jurisdictions meet the
40 density criteria in subparagraphs 1. and 2. ~~1.-4.~~ by using the
41 most recent land area data from the decennial census conducted
42 by the United States Census Bureau ~~of the Census~~ of the United
43 States Department of Commerce and the latest available
44 population estimates determined pursuant to s. 186.901. If any
45 local government has had an annexation, contraction, or new
46 incorporation, the office ~~of Economic and Demographic Research~~
47 shall determine the population density using the new
48 jurisdictional boundaries ~~as~~ recorded in accordance with s.
49 171.091. The office ~~of Economic and Demographic Research~~ shall
50 annually submit to the state land planning agency by July 1 a
51 list of jurisdictions that meet the total population and density
52 criteria. The state land planning agency shall publish the list
53 ~~of jurisdictions~~ on its Internet website within 7 days after the
54 list is received. The designation of jurisdictions that meet the
55 criteria of subparagraphs 1. and 2. ~~1.-4.~~ is effective upon
56 publication on the state land planning agency's Internet
57 website. If a municipality that has previously met the criteria
58 no longer meets the criteria, the state land planning agency

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59 shall maintain the municipality on the list and indicate the
60 year the jurisdiction last met the criteria. However, any
61 proposed development of regional impact not within the
62 established boundaries of a municipality at the time the
63 municipality last met the criteria must meet the requirements of
64 this section until such time as the municipality as a whole
65 meets the criteria. Any county that meets the criteria shall
66 remain on the list in accordance with ~~the provisions of~~ this
67 paragraph. Any jurisdiction that was placed on the dense urban
68 land area list before June 2, 2011, shall remain on the list in
69 accordance with ~~the provisions of~~ this paragraph.

70 Section 2. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/14
Meeting Date

Topic DULA / DELS

Bill Number SB 372
(if applicable)

Name CHARLES PATTISON

Amendment Barcode _____
(if applicable)

Job Title PRESIDENT

Address 308 N. MONROE
Street
TALLAHASSEE
City State Zip

Phone 222-6277

E-mail cpattison@1000fot.org

Speaking: For Against Information

Representing 1000 FRIENDS 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/14

Meeting Date

Topic Developments of Regional Impact Bill Number 372
(if applicable)

Name Leticia M Adams Amendment Barcode _____
(if applicable)

Job Title Senior Policy Director

Address 136 South Bronough Street Phone 850-544-6866

Street

Tallahassee FL 32301
City State Zip

E-mail ladams@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.

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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)

2/4/14

Meeting Date

Topic _____

Bill Number SB 372
(if applicable)

Name Gary Hunter

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 119 S Calhoun Street
Street

Phone 222-7500

Tallahassee FL 32301
City State Zip

E-mail garyh@hgsllaw.com

Speaking: For Against Information

Representing Association of Florida Community Developers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
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2/4/14
Meeting Date

Topic DRS

Bill Number 372
(if applicable)

Name David Cullen

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1674 University Hwy #225

Phone 941.373.2404

Street

Sarasota FL 34243

City

State

Zip

E-mail cullenasa@aol.com

Speaking: For Against Information

Representing Siraya Club FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO

26th District

December 18, 2013

Senator Wilton Simpson
315 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Simpson:

I respectfully request that SB 372, Developments of Regional Impact, be scheduled for a hearing in the Committee on Community Affairs at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Bill Galvano

cc: Tom Yeatman
Ann Whittaker

REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: 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 Community Affairs

BILL: CS/SB 230

INTRODUCER: Transportation Committee and Senator Simmons

SUBJECT: Orlando-Orange County Expressway Authority

DATE: February 4, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Fav/CS
2.	Stearns	Yeatman	CA	Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE – Technical Changes

I. Summary:

CS/SB 230 re-names the Orlando-Orange County Expressway Authority (OOCEA) as the Central Florida Expressway Authority (CFX) and expands the area served by the CFX to include the counties of Seminole, Lake, and Osceola Counties in addition to Orange County. The bill provides for the transfer of governance and control, legal rights and powers, responsibilities, terms and obligations of the OOCEA System to the CFX and, in addition:

- provides for the composition of the governing body of the CFX, the appointment of its officers and the expiration of terms of standing OOCEA board members, and revises quorum and voting requirements applicable to CFX;
- removes the existing OOCEA requirement that the route of a project be approved by a municipality before the right-of-way can be acquired;
- requires that the CFX encourage the inclusion of local-, small-, minority-, and women-owned businesses in its procurement and contracting opportunities;
- removes the existing OOCEA authority to waive payment and performance bonds for certain public works projects awarded pursuant to an economic development program;
- provides that upon termination of the lease-purchase agreement title in fee simple absolute to the former OOCEA system will be transferred to the state and extends the term of authorized lease-purchase agreements from 40 to 99 years;
- provides for the transfer of the Osceola County Expressway System to the CFX and provides for the repeal of part V of chapter 348, F.S., when the Osceola County Expressway System is transferred to the CFX; and

- provides an effective date of July 1, 2015.

II. Present Situation:

Orlando-Orange County Expressway Authority

The Orlando-Orange County Expressway Authority currently serves Orange County and is authorized to construct, operate, and maintain roads, bridges, avenues of access, thoroughfares, and boulevards in the county, as well as outside the jurisdictional boundaries of Orange County with the consent of the county within whose jurisdiction the activities occur.¹

The OOCEA governing body consists of five members. The Governor appoints three members who are citizens of Orange County and who serve four year terms and may be reappointed. The Orange County mayor and the Florida Department of Transportation's (FDOT) District Five Secretary serve as *ex-officio* members of the Board.²

The OOCEA currently owns and operates 109 centerline miles of roadway in Orange County, which includes:

- 22 miles of the Spessard L. Holland East-West Expressway (SR 408);
- 23 miles of the Martin Andersen Beachline Expressway (SR 528);
- 33 miles of the Central Florida GreeneWay (SR 417);
- 22 miles of the Daniel Webster Western Beltway (SR 429); and
- 9 miles of the John Land Apopka Expressway (SR 414).³

Pursuant to an existing Memorandum of Understanding (MOU) and lease-purchase agreement between the FDOT and the OOCEA, the authority will independently finance, build, own and manage certain portions of the Wekiva Parkway. To ensure that funds are available to the FDOT for the Wekiva Parkway, the 2012 Legislature codified references to the existing MOU and lease-purchase agreements and established a repayment schedule for the OOCEA to reimburse the FDOT for the costs of operation and maintenance of the Orlando-Orange County Expressway System in accordance with the terms of the MOU.⁴

The OOCEA was required to pay the FDOT \$10 million on July 1, 2012, and is required to pay \$20 million every July 1 thereafter to pay off the long-term debt obligation to the FDOT. The FDOT advises that the OOCEA's long-term debt as of November 30, 2013, is \$211,334,985.29.

Osceola County Expressway Authority

Created in 2010, the Osceola County Expressway Authority currently serves Osceola County and has the purposes and powers identified in the Florida Expressway Authority Act, including the power to acquire, hold, construct, improve, maintain, operate, and own an expressway system.⁵

¹ Section 348.754(2)(n), F.S.

² Section 348.753, F.S.

³ FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2012 Report*, p. 40.

⁴ Chapter 2012-128, L.O.F.

⁵ Section 348.0004, F.S.

OCX Governing Board

The OCX governing body consists of six members. Five members must be residents of Osceola County, one of which must be a member of a racial or ethnic minority. Three of the five are appointed by the governing body of the county and the remaining two are appointed by the Governor. The FDOT's District Five Secretary serves as an *ex-officio*, non-voting member.⁶

OCX Facilities

The OCX is not currently operating any facility and has no funding or staff. Staff assistance and other support have been provided by Osceola County. The FDOT provided a \$2.5 million grant to the OCX in May of 2012, and the funds will be used for two Project Development and Environment Studies that will be conducted by the Florida Turnpike Enterprise. The OCX adopted a 2040 Master Plan that includes construction of four proposed tolled expressways: the Poinciana Parkway, the Southport Connector Expressway, the Northeast Connector Expressway, and the Osceola Parkway Extension. The OCX has an agreement with Osceola County under which the county will advance funds for operation and startup costs until the OCX has a revenue-producing project and which requires the OCX to repay the county within 15 years of receiving the funds. A 2012 agreement calls for issuance of bonds by the county to pay for the Poinciana Parkway project costs incurred by the OCX. The OCX will design and construct the parkway pursuant to a lease-purchase agreement with the county.⁷

Seminole County and Lake County

The Seminole County Expressway Authority was abolished by the Legislature in 2011;⁸ neither Seminole County nor Lake County is currently served by an expressway authority. The Florida Turnpike Enterprise currently owns and operates Florida's Turnpike, parts of which are located within Seminole and Lake Counties.

III. Effect of Proposed Changes:

Generally, the bill re-names the OOCEA as the CFX; expands the area served by the CFX beyond Orange County to include Seminole, Lake, and Osceola Counties; and transfers governance and control of the OOCEA system to the CFX.

Section 1 amends s. 348.751, F.S., to change the short title of part III of ch. 348, F.S., from the "Orlando-Orange County Expressway Authority Law" to the "Central Florida Expressway Authority Law."

Section 2 amends s. 348.752, F.S., to define:

- "Central Florida Expressway Authority" to mean the "body politic and corporate and agency of the state created by this chapter";

⁶ Section 348.9952, F.S.

⁷ FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2012 Report*, p. 171.

⁸ Ch. 2011-64, L.O.F.

- “Central Florida Expressway System,” to mean “any expressway and appurtenant facilities including all approaches, roads, bridges, and avenues for the expressway and any rapid transit, trams, or fixed guideways located within the right-of-way of an expressway; and
- “transportation facilities” to mean the mobile and fixed assets, and the associated real or personal property or rights, used in the transportation of persons or property by any means of conveyance, and all appurtenances, such as, but not limited to, highways; limited or controlled access lanes, avenues of access, and facilities; vehicles; fixed guideway facilities, including maintenance facilities. Administrative and other office space used by the authority is also included in the term.

This section of the bill also deletes the definitions of “city” and “county,” revises various definitions to conform terminology to the renaming, and makes technical changes.

Section 3 amends s. 348.753, F.S., in which the OOCEA is created, to replace and rename the OOCEA as the Central Florida Expressway Authority and requires that the CFX assume the governance and control of the OOCEA System effective July 1, 2015.

The bill also provides for eleven members of the CFX governing board as follows:

- the chairs of the boards of county commission of Seminole, Lake, and Osceola Counties shall each appoint one member, who may be a commission member or chair;
- six citizen members appointed by the Governor, two of which must be citizens of Orange County; one member each from Seminole, Lake, and Osceola Counties; and one member from any of the identified counties;
- the mayor of Orange County; and
- the mayor of the City of Orlando.

The executive director of Florida’s Turnpike Enterprise serves as a nonvoting advisor to the CFX governing body. The Governor’s appointees are to serve four-year terms; county-appointed members are to serve two-year terms; and the terms of currently standing OOCEA board members expire on July 1, 2015. A person who is an officer or employee of a municipality or county may not be appointed as a CFX board member.

Section 4 amends s. 348.754, F.S., relating to the purposes and powers of the authority, to:

- specify the area served by the authority to be within the geographical boundaries of Orange, Seminole, Lake, and Osceola Counties, except as otherwise specifically provided by law;
- authorize the CFX to construct the Central Florida Expressway System, including rapid transit, trams, fixed guideways, thoroughfares, and boulevards;
- authorize the CFX to construct, operate, and maintain roads, bridges, and transportation facilities, and electronic toll payment systems on the roads, bridges, and transportation facilities outside the boundaries of Orange, Seminole, Lake, and Osceola Counties with the consent of the county within whose jurisdiction the activities occur; and
- prohibit the CFX from constructing any extensions, additions, or improvements to the expressway system in Lake County without the prior consent of the FDOT Secretary to

ensure the continued financial feasibility of the construction of the Wekiva Parkway by the FDOT.

The term of authorized existing lease-purchase agreements is extended from 40 to 99 years. However, the bill precludes the CFX from entering into any other lease-purchase agreements with the FDOT, and from amending the existing agreement between the OOCEA and the FDOT to expand or increase the FDOT's obligations unless it is determined by the FDOT that an amendment is necessary to permit the refunding of bonds issued prior to July 1, 2013.

Toll revenues attributable to an increase in toll rates charged on or after July 1, 2015, may not be used to construct or expand a different facility, unless a two-thirds majority of the members of the authority approves the use of revenues, with certain exceptions. Notwithstanding s. 338.165, F.S., and except as otherwise prohibited, the bill provides that the authority may, within the right-of-way of the expressway system, use excess revenues to finance or refinance the planning, design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of an intermodal facility or facilities, a multimodal corridor or corridors, or any programs or projects that will improve the levels of service on the expressway system.

The requirement for approval of the municipal governing board of a project route prior to the acquisition of right-of-way for a project within the boundaries of Orange County is removed, as are provisions authorizing the CFX to waive payment and performance bonds on certain construction contracts and related small business provisions.

Sections 5 through 11 conform terminology and make grammatical and editorial changes by amending:

- s. 348.7543, F.S., relating to bond financing authority for improvements by the CFX;
- s. 348.7544, F.S., relating to construction and financing of the Northwest Beltway Part A;
- s. 348.7545, F.S., relating to construction and financing of the Western Beltway Part C;
- s. 348.7546, F.S., relating to construction and financing of the Wekiva Parkway;
- s. 348.7547, F.S., relating to construction and financing of the Maitland Boulevard Extension and the Northwest Beltway Part A realignment;
- s. 348.755, F.S., relating to bonds of the authority; and
- s. 348.756, F.S., relating to remedies of the bondholders.

Section 12 amends s. 348.757, F.S., to provide that upon the termination of the current lease-purchase agreement between the OOCEA and the FDOT title in fee simple absolute to the former OOCEA system must be transferred to the state.

Sections 13 through 18 conform terminology and make grammatical and editorial changes by amending:

- s. 348.758, F.S., relating to appointment of the FDOT as construction agent for the authority;
- s. 348.759, F.S., relating to acquisition of lands and property;
- s. 348.760, F.S., relating to cooperation with other units, boards, agencies, and individuals;
- s. 348.761, F.S., relating to covenants of the state;

- s. 348.765, F.S., relating to complete and additional authority; and
- s. 369.317, F.S., relating to the Wekiva Parkway.

Section 19 amends s. 369.324, F.S., to remove and replace references to the OOCEA and to the previously repealed Seminole County Expressway Authority and revise the composition of the Wekiva River Basin Commission as a result of the repeal of the Seminole County Expressway Authority.

Section 20 transfers all powers, governance, and control of the Osceola County Expressway System and the assets, liabilities, facilities, tangible and intangible property and any rights in the property, as well as any other legal rights, to the CFX effective upon completion of the construction of the Poinciana Parkway, with provisions for extension under specified circumstances; and repeals part V, ch. 348, F.S., consisting of ss. 348.9950 – 348.9961, F.S., on the same date that the OCX System is transferred to the CFX. The CFX is also directed to reimburse all obligations of any other governmental entities with respect to the OCX system as specified.

Section 21 provides that the act shall take effect on July 1, 2015.

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:

According to the FDOT: "Possible indeterminate negative impact as the proposed legislation extends the maximum term of the lease-purchase agreement from the longer of 40 years and bonds outstanding to the longer of 99 years and bonds outstanding. Provides that the existing lease-purchase agreement may not be amended to expand or increase the

Department's obligations unless they are determined necessary to permit the refunding of bonds issued before July 1, 2013. Current long term debt is over \$211 million and growing.”⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 348.751, 348.752, 348.753, 348.754, 348.7543, 348.7544, 348.7545, 348.7546, 348.7547, 348.755, 348.756, 348.757, 348.758, 348.759, 348.760, 348.761, 348.765, 369.317, and 369.324.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Transportation on January 9, 2014:

The CS incorporates a technical amendment to change the word “chapter” to the word “part” (lines 72 and 88 of the original bill) to reference the appropriate part of chapter 348, F.S., applicable to the re-named Central Florida Expressway Authority and to correct a title error.

B. Amendments:

None.

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

⁹ 2014 FDOT Legislative Bill Analysis, SB 230. On file in the Senate Transportation Committee.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 244 - 265

and insert:

authority shall enter upon his or her duties. Members of the authority may be removed from office by the Governor for misconduct, malfeasance, misfeasance, or nonfeasance in office.

(c) Members of the authority are entitled to receive reimbursement from the authority for travel and other necessary expenses incurred in connection with the business of the



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11 authority as provided in s. 112.061, but may not draw salaries
12 or other compensation.

13 (5)(4)(a) The authority may employ an executive secretary,
14 an executive director, its own counsel and legal staff,
15 technical experts, and the ~~such~~ engineers, ~~and such~~ employees
16 ~~that, permanent or temporary,~~ as it requires. The authority may
17 ~~require and may~~ determine the qualifications and fix the
18 compensation of such persons, firms, or corporations and may
19 employ a fiscal agent or agents; ~~provided, however, that~~ the
20 authority shall solicit sealed proposals from at least three
21 persons, firms, or corporations for the performance of any
22 services as fiscal agents. The authority may delegate to one or
23 more of its agents or employees the ~~such of its~~ power ~~as it~~
24 deems ~~shall deem~~ necessary to carry out the purposes of this
25 part, ~~subject always to the supervision and control of the~~
26 ~~authority. Members of the authority may be removed from their~~
27 ~~office by the Governor for misconduct, malfeasance, misfeasance,~~
28 ~~or nonfeasance in office.~~

29 ~~(b) Members of the authority are shall be entitled to~~
30 ~~receive from the authority their travel and other necessary~~
31 ~~expenses incurred in connection with the business of the~~
32 ~~authority as provided in s. 112.061, but may not they shall draw~~
33 ~~no salaries or other compensation.~~

34 (6) A member or the executive director of the authority may
35 not do any of the following:

36 (a) Directly or indirectly procure contractual services for
37 the authority from a business entity of which a relative of the
38 member or executive director is an officer, partner, director,
39 or proprietor or in which the member or executive director or



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40 his or her spouse or child, has a material interest.

41 (b) Have an employment or contractual relationship that
42 will create a continuing or recurring conflict between his or
43 her private interests and the performance of his or her public
44 duties or that would impede the full and faithful discharge of
45 his or her public duties.

46 (c) Within 2 years after retirement or termination, have an
47 employment or contractual relationship with a business entity
48 other than an agency, as defined in s. 112.312, that was doing
49 business with the authority at any time during the person's
50 membership on or employment by the authority.

51 (d) After retirement or termination, have an employment or
52 contractual relationship with a business entity other than an
53 agency as defined in s. 112.312, in connection with a contract
54 in which the member or executive director personally and
55 substantially participated in through decision, approval,
56 disapproval, recommendation, rendering of advice, or
57 investigation while he or she was a member or employee of the
58 authority.

59 (7) A violation of subsection (6) is punishable in
60 accordance with s. 112.317.

61 Section 4. Section 348.7535, Florida Statutes, is created
62 to read:

63 348.7535 Campaign contributions to members of the governing
64 board.—

65 (1) For purposes of this section, the term "contractor"
66 means a real person, corporation, partnership, limited
67 partnership, company, limited liability company, proprietorship,
68 firm, enterprise, franchise, association, self-employed



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69 individual, or trust, whether fictitiously named or not, doing
70 business with the Central Florida Expressway Authority. The term
71 does not include the spouse or family members of a real person
72 doing business with the authority or an employee having no
73 ownership interest in the entity doing business with the
74 authority.

75 (2) A member of the governing body of the Central Florida
76 Expressway Authority may not accept a campaign contribution for
77 himself or herself, or for a political committee of which he or
78 she is a member, from any of following persons or entities:

79 1. A contractor.

80 2. A principal of a contractor.

81 3. A person or entity that is currently bidding or
82 negotiating to become a contractor.

83 4. A principal of a person or entity that is currently
84 bidding or negotiating to become a contractor.

85
86 ===== T I T L E A M E N D M E N T =====

87 And the title is amended as follows:

88 Delete line 17

89 and insert:

90 technical changes; prohibiting a member or the
91 executive director of the authority from contracting
92 with certain business entities and from having certain
93 employment or contractual relationships; prohibiting a
94 retired or terminated member or executive director of
95 the authority from contracting with a business entity
96 under certain circumstances; providing penalties;
97 creating s. 348.7535, F.S.; prohibiting a member of



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98 the governing body of the Central Florida Expressway
99 Authority from accepting certain campaign
100 contributions from certain individuals; amending s.
101 348.754, F.S.;

By the Committee on Transportation; and Senator Simmons

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1 A bill to be entitled
2 An act relating to the Orlando-Orange County
3 Expressway Authority; amending ss. 348.751 and
4 348.752, F.S.; renaming the Orlando-Orange County
5 Expressway System as the "Central Florida Expressway
6 System"; revising definitions; making technical
7 changes; amending s. 348.753, F.S.; creating the
8 Central Florida Expressway Authority; providing for
9 the transfer of governance and control, legal rights
10 and powers, responsibilities, terms, and obligations
11 to the authority; providing conditions for the
12 transfer; revising the composition of the governing
13 body of the authority; providing for appointment of
14 officers of the authority and for the expiration of
15 terms of standing board members; revising quorum and
16 voting requirements; conforming terminology and making
17 technical changes; amending s. 348.754, F.S.;
18 providing that the area served by the authority is
19 within the geopolitical boundaries of Orange,
20 Seminole, Lake, and Osceola Counties; requiring the
21 authority to have prior consent from the Secretary of
22 the Department of Transportation to construct an
23 extension, addition, or improvement to the expressway
24 system in Lake County; extending, to 99 years from 40
25 years, the term of a lease-purchase agreement;
26 limiting the authority's authority to enter into a
27 lease-purchase agreement; limiting the use of certain
28 toll-revenues; providing exceptions; removing the
29 requirement that the route of a project must be

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30 approved by a municipality before the right-of-way can
31 be acquired; requiring that the authority encourage
32 the inclusion of local-, small-, minority-, and women-
33 owned businesses in its procurement and contracting
34 opportunities; removing the authority and criteria for
35 an authority to waive payment and performance bonds
36 for certain public works projects that are awarded
37 pursuant to an economic development program;
38 conforming terminology and making technical changes;
39 amending ss. 348.7543, 348.7544, 348.7545, 348.7546,
40 348.7547, 348.755, and 348.756, F.S.; conforming
41 terminology and making technical changes; amending s.
42 348.757, F.S.; providing that upon termination of the
43 lease-purchase agreement of the former Orlando-Orange
44 County Expressway System, title in fee simple to the
45 former system shall be transferred to the state;
46 conforming terminology and making technical changes;
47 amending ss. 348.758, 348.759, 348.760, 348.761,
48 348.765, and 369.317, F.S.; conforming terminology and
49 making technical changes; amending s. 369.324, F.S.;
50 revising the membership of the Wekiva River Basin
51 Commission; conforming terminology; providing criteria
52 for the transfer of the Osceola County Expressway
53 System to the Central Florida Expressway Authority;
54 providing for the repeal of part V of ch. 348, F.S.,
55 when the Osceola County Expressway System is
56 transferred to the Central Florida Expressway
57 Authority; requiring the Central Florida Expressway
58 Authority to reimburse other governmental entities for

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obligations related to the Osceola County Expressway System; providing for reimbursement after payment of other obligations; providing an effective date.

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

Section 1. Section 348.751, Florida Statutes, is amended to read:

348.751 Short title.—This part ~~shall be known and~~ may be cited as the "Central Florida Orlando-Orange County Expressway Authority Law."

Section 2. Section 348.752, Florida Statutes, is amended to read:

348.752 Definitions.—As used in this part ~~The following terms, whenever used or referred to in this law, shall have the following meanings, except in those instances where the context clearly indicates otherwise:~~

(1) The term "agency of the state" means ~~and includes~~ the state and any department of, or corporation, agency, or instrumentality ~~heretofore or hereafter~~ created, designated, or established by, the state.

(2) The term "authority" means the body politic and corporate, and agency of the state created by this part.

(3) The term "bonds" means ~~and includes~~ the notes, bonds, refunding bonds, or other evidences of indebtedness or obligations, in either temporary or definitive form, which the authority is authorized to issue pursuant to this part.

(4) The term "Central Florida Expressway Authority" means the body politic and corporate, and agency of the state created

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88 by this part.

89 (5) The term "Central Florida Expressway System" means any
90 expressway and appurtenant facilities, including all approaches,
91 roads, bridges, and avenues for the expressway and any rapid
92 transit, trams, or fixed guideways located within the right-of-
93 way of an expressway.

94 ~~(4) The term "city" means the City of Orlando.~~

95 ~~(5) The term "county" means the County of Orange.~~

96 (6) The term "department" means the Department of
97 Transportation ~~existing under chapters 334-339.~~

98 (7) The term "expressway" has the same meaning ~~is the same~~
99 as limited access expressway.

100 (8) The term "federal agency" means and includes the United
101 States, the President of the United States, and any department
102 of, or corporation, agency, or instrumentality ~~heretofore or~~
103 ~~hereafter~~ created, designated, or established by, the United
104 States.

105 (9) The term "lease-purchase agreement" means the lease-
106 purchase agreements that ~~which~~ the authority is authorized
107 ~~pursuant to this part~~ to enter into with the Department of
108 Transportation pursuant to this part.

109 (10) The term "limited access expressway" means a street or
110 highway specifically ~~especially~~ designed for through traffic,
111 and over, from, or to which, a ~~no~~ person does not ~~shall~~ have the
112 right of easement, use, or access except in accordance with the
113 rules of ~~and regulations promulgated and established by the~~
114 authority governing its use ~~for the use of such facility.~~ Such
115 highways or streets may be parkways that do not allow traffic
116 by, ~~from which~~ trucks, buses, and other commercial vehicles

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117 shall be excluded, or they may be freeways open to use by all
118 customary forms of street and highway traffic.

119 (11) The term ~~"members"~~ means ~~the governing body of the~~
120 ~~authority, and the term "member" means~~ an individual who serves
121 on the one of the individuals constituting such governing body
122 of the authority.

123 (12) The term "Orange County gasoline tax funds" means ~~all~~
124 the revenue derived from the 80-percent surplus gasoline tax
125 funds accruing in each year to the Department of Transportation
126 for use in Orange County under ~~the provisions of s. 9, Art. XII~~
127 of the State Constitution, after deducting ~~deduction only of~~ any
128 amounts of said gasoline tax funds previously ~~heretofore~~ pledged
129 by the department or the county for outstanding obligations.

130 ~~(13) The term "Orlando-Orange County Expressway System"~~
131 ~~means any and all expressways and appurtenant facilities~~
132 ~~thereto, including, but not limited to, all approaches, roads,~~
133 ~~bridges, and avenues of access for said expressway or~~
134 ~~expressways.~~

135 ~~(13)~~ ~~(14)~~ The term "State Board of Administration" means the
136 body corporate existing under the provisions of s. 4, Art. IV of
137 the State Constitution, or any successor ~~thereto.~~

138 (14) The term "transportation facilities" means and
139 includes the mobile and fixed assets, and the associated real or
140 personal property or rights, used in the transportation of
141 persons or property by any means of conveyance, and all
142 appurtenances, such as, but not limited to, highways; limited or
143 controlled access lanes, avenues of access, and facilities;
144 vehicles; fixed guideway facilities, including maintenance
145 facilities; and administrative and other office space for the

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146 exercise by the authority of the powers and obligations granted
147 in this part.

148 ~~(15) Words importing singular number include the plural~~
149 ~~number in each case and vice versa, and words importing persons~~
150 ~~include firms and corporations.~~

151 Section 3. Section 348.753, Florida Statutes, is amended to
152 read:

153 348.753 Central Florida ~~Orlando-Orange County~~ Expressway
154 Authority.-

155 (1) There is ~~hereby~~ created and established a body politic
156 and corporate, an agency of the state, to be known as the
157 Central Florida ~~Orlando-Orange County~~ Expressway Authority.~~7~~
158 hereinafter referred to as "authority."

159 (2) (a) Effective July 1, 2015, the Central Florida
160 Expressway Authority shall assume the governance and control of
161 the Orlando-Orange County Expressway Authority System, including
162 its assets, personnel, contracts, obligations, liabilities,
163 facilities, and tangible and intangible property. Any rights in
164 such property, and other legal rights of the authority, are
165 transferred to the Central Florida Expressway Authority. The
166 Central Florida Expressway Authority shall succeed to and assume
167 the powers, responsibilities, and obligations of the Orlando-
168 Orange County Expressway Authority on July 1, 2015.

169 (b) The transfer pursuant to this subsection is subject to
170 the terms and covenants provided for the protection of the
171 holders of the Orlando-Orange County Expressway Authority bonds
172 in the lease-purchase agreement and the resolutions adopted in
173 connection with the issuance of the bonds. Further, the transfer
174 does not impair the terms of the contract between the Orlando-

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175 Orange County Expressway Authority and the bondholders, does not
176 act to the detriment of the bondholders, and does not diminish
177 the security for the bonds. After the transfer, the Central
178 Florida Expressway Authority shall operate and maintain the
179 expressway system and any other facilities of the Orlando-Orange
180 County Expressway Authority in accordance with the terms,
181 conditions, and covenants contained in the bond resolutions and
182 lease-purchase agreement securing the bonds of the authority.
183 The Central Florida Expressway Authority shall collect toll
184 revenues and apply them to the payment of debt service as
185 provided in the bond resolution securing the bonds, and shall
186 expressly assume all obligations relating to the bonds to ensure
187 that the transfer will have no adverse impact on the security
188 for the bonds. The transfer does not make the obligation to pay
189 the principal and interest on the bonds a general liability of
190 the Central Florida Expressway Authority or pledge additional
191 expressway system revenues to payment of the bonds. Revenues
192 that are generated by the expressway system and other facilities
193 of the Central Florida Expressway Authority which were pledged
194 by the Orlando-Orange County Expressway Authority to payment of
195 the bonds will remain subject to the pledge for the benefit of
196 the bondholders. The transfer does not modify or eliminate any
197 prior obligation of the department to pay certain costs of the
198 expressway system from sources other than revenues of the
199 expressway system.

200 (3)~~(2)~~ The governing body of the authority shall consist of
201 11 ~~five~~ members. The chairs of the boards of the county
202 commissions of Seminole, Lake, and Osceola Counties shall each
203 appoint one member, who may be a commission member or chair. The

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204 Governor shall appoint six citizen members. Of the Governor's
205 appointments, two ~~Three~~ members must shall be citizens of Orange
206 County, one member each must be a citizen of Seminole, Lake, and
207 Osceola Counties, and one member may be a citizen of any of the
208 identified counties who shall be appointed by the Governor. The
209 10th fourth member must shall be, ~~ex officio,~~ the Mayor of chair
210 of the County Commissioners of Orange County. The 11th member
211 must be the Mayor of the City of Orlando. The executive director
212 of Florida Turnpike Enterprise shall serve as a nonvoting
213 advisor to the governing body of the authority, ~~and the fifth~~
214 ~~member shall be, ex officio, the district secretary of the~~
215 ~~Department of Transportation serving in the district that~~
216 ~~contains Orange County. The term of Each appointed member~~
217 appointed by the Governor shall serve be for 4 years. Each
218 county-appointed member shall serve for 2 years. The terms of
219 standing board members expire on July 1, 2015. Each appointed
220 member shall hold office until his or her successor has been
221 appointed and has qualified. A vacancy occurring during a term
222 must shall be filled only for the balance of the unexpired term.
223 Each appointed member of the authority shall be a person of
224 outstanding reputation for integrity, responsibility, and
225 business ability, but, except as provided in this subsection, a
226 ~~no~~ person who is an officer or employee of a municipality or any
227 city or of Orange county may not in any other capacity shall be
228 an appointed member of the authority. Any member of the
229 authority is shall be eligible for reappointment.

230 (4)(3)(a) The authority shall elect one of its members as
231 chair of the authority. The authority shall also elect one of
232 its members as vice chair, one of its members as a secretary,

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233 and one of its members as a treasurer ~~who may or may not be~~
234 ~~members of the authority~~. The chair, vice chair, secretary, and
235 treasurer shall hold such offices at the will of the authority.
236 Six ~~Three~~ members of the authority ~~shall~~ constitute a quorum,
237 and the vote of six ~~three~~ members ~~is~~ ~~shall be~~ necessary for any
238 action taken by the authority. A ~~No~~ vacancy in the authority
239 does not ~~shall~~ impair the right of a quorum of the authority to
240 exercise all of the rights and perform all of the duties of the
241 authority.

242 (b) Upon the effective date of his or her appointment, or
243 as soon thereafter as practicable, each appointed member of the
244 authority shall enter upon his or her duties.

245 (5) ~~(4)~~ (a) The authority may employ an executive secretary,
246 an executive director, its own counsel and legal staff,
247 technical experts, and the ~~such~~ engineers, ~~and such~~ employees
248 that, ~~permanent or temporary,~~ as it requires. The authority ~~may~~
249 ~~require~~ and may determine the qualifications and fix the
250 compensation of such persons, firms, or corporations, and may
251 employ a fiscal agent or agents; ~~provided,~~ however, ~~that~~ the
252 authority shall solicit sealed proposals from at least three
253 persons, firms, or corporations for the performance of any
254 services as fiscal agents. The authority may delegate to one or
255 more of its agents or employees the ~~such of its~~ power ~~as~~ it
256 deems ~~shall deem~~ necessary to carry out the purposes of this
257 part, ~~subject always to the supervision and control of the~~
258 authority. Members of the authority may be removed from ~~their~~
259 office by the Governor for misconduct, malfeasance, misfeasance,
260 or nonfeasance in office.

261 (b) Members of the authority are ~~shall be~~ entitled to

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262 receive from the authority their travel and other necessary
263 expenses incurred in connection with the business of the
264 authority as provided in s. 112.061, but may not ~~they shall~~ draw
265 ~~no~~ salaries or other compensation.

266 Section 4. Section 348.754, Florida Statutes, is amended to
267 read:

268 348.754 Purposes and powers.—

269 (1) (a) The authority created and established under ~~by the~~
270 ~~provisions of~~ this part is ~~hereby~~ granted and has ~~shall have~~ the
271 right to acquire, hold, construct, improve, maintain, operate,
272 own, and lease in the capacity of lessor, the Central Florida
273 ~~Orlando-Orange County~~ Expressway System, hereinafter referred to
274 as "system." Except as otherwise specifically provided by law,
275 including paragraph (2) (n), the area served by the authority
276 shall be within the geographical boundaries of Orange, Seminole,
277 Lake, and Osceola Counties.

278 (b) ~~It is the express intention of this part that said~~
279 ~~authority,~~ In the construction of the Central Florida ~~said~~
280 ~~Orlando-Orange County~~ Expressway System, the authority may ~~shall~~
281 ~~be authorized to~~ construct any extensions, additions, or
282 improvements to the ~~said~~ system or appurtenant facilities,
283 including all necessary approaches, roads, bridges, ~~and~~ avenues
284 of access, rapid transit, trams, fixed guideways, thoroughfares,
285 and boulevards with any such changes, modifications, or
286 revisions of the ~~said~~ project which are ~~as shall be~~ deemed
287 desirable and proper.

288 (c) Notwithstanding any other provision of this section to
289 the contrary, to ensure the continued financial feasibility of
290 the portion of the Wekiva Parkway to be constructed by the

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291 department, the authority may not, without the prior consent of
292 the secretary of the department, construct any extensions,
293 additions, or improvements to the expressway system in Lake
294 County.

295 (2) The authority ~~is hereby granted, and shall have and~~ may
296 exercise all powers necessary, appurtenant, convenient, or
297 incidental to the implementation ~~carrying out~~ of the stated
298 ~~aforsaid~~ purposes, including, but not ~~without being~~ limited to,
299 the following rights and powers:

300 (a) To sue and be sued, implead and be impleaded, complain
301 and defend in all courts.

302 (b) To adopt, use, and alter at will a corporate seal.

303 (c) To acquire by donation or otherwise, purchase, hold,
304 lease as lessee, and use any franchise or any, property, real,
305 personal, ~~or~~ mixed, or tangible or intangible, or any options
306 ~~thereof~~ in its own name or in conjunction with others, or
307 interest in those options ~~therein~~, necessary or desirable to
308 carry ~~for carrying~~ out the purposes of the authority, and to
309 sell, lease as lessor, transfer, and dispose of any property or
310 interest in the property ~~therein~~ at any time acquired by it.

311 (d) To enter into and make leases for terms not exceeding
312 99 years, as ~~either~~ lessee or lessor, in order to carry out the
313 right to lease as specified ~~set forth~~ in this part.

314 (e) To enter into and make lease-purchase agreements with
315 the department for terms not exceeding 99 ~~40~~ years, or until any
316 bonds secured by a pledge of rentals pursuant to the agreement
317 ~~thereunder~~, and any refundings pursuant to the agreement
318 ~~thereof~~, are fully paid as to both principal and interest,
319 whichever is longer. The authority is a party to a lease-

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320 purchase agreement between the department and the authority
321 dated December 23, 1985, as supplemented by a first supplement
322 to the lease-purchase agreement dated November 25, 1986, and a
323 second supplement to the lease-purchase agreement dated October
324 27, 1988. The authority may not enter into other lease-purchase
325 agreements with the department and may not amend the existing
326 agreement in a manner that expands or increases the department's
327 obligations unless the department determines that the agreement
328 or amendment is necessary to permit the refunding of bonds
329 issued before July 1, 2013.

330 (f) To fix, alter, charge, establish, and collect rates,
331 fees, rentals, and other charges for the services and facilities
332 of the Central Florida Orlando-Orange County Expressway System,
333 which must rates, fees, rentals and other charges shall always
334 be sufficient to comply with any covenants made with the holders
335 of any bonds issued pursuant to this part; ~~provided,~~ however,
336 ~~that~~ such right and power may be assigned or delegated, by the
337 authority, to the department. Toll revenues attributable to an
338 increase in the toll rates charged on or after July 1, 2015, for
339 the use of a facility or portion of a facility may not be used
340 to construct or expand a different facility unless a two-thirds
341 majority of the members of the authority votes to approve such
342 use. This requirement does not apply if, and to the extent that:

343 1. Application of the requirement would violate any
344 covenant established in a resolution or trust indenture under
345 which bonds were issued by the Orlando-Orange County Expressway
346 Authority on or before July 1, 2015; or

347 2. Application of the requirement would cause the authority
348 to be unable to meet its obligations under the terms of the

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349 memorandum of understanding between the authority and the
350 department as ratified by the Orlando-Orange County Expressway
351 Authority board on February 22, 2012.

352
353 Notwithstanding s. 338.165, and except as otherwise prohibited
354 by this part, to the extent revenues of the expressway system
355 exceed amounts required to comply with any covenants made with
356 the holders of bonds issued pursuant to this part, revenues may
357 be used for purposes enumerated in subsection (6), provided the
358 expenditures are consistent with the metropolitan planning
359 organization's adopted long-range plan.

360 (g) To borrow money, make and issue negotiable notes,
361 bonds, refunding bonds, and other evidences of indebtedness or
362 obligations, either in temporary or definitive form, ~~hereinafter~~
363 ~~in this chapter sometimes called "bonds" of the authority,~~ for
364 the purpose of financing all or part of the improvement or
365 extension of the Central Florida Orlando-Orange County
366 Expressway System, and appurtenant facilities, including all
367 approaches, streets, roads, bridges, and avenues of access for
368 the Central Florida said Orlando-Orange County Expressway System
369 and for any other purpose authorized by this part, said bonds to
370 mature in not exceeding 40 years from the date of the issuance
371 thereof, and to secure the payment of such bonds or any part
372 thereof by a pledge of any or all of its revenues, rates, fees,
373 rentals, or other charges, including all or any portion of the
374 Orange County gasoline tax funds received by the authority
375 pursuant to ~~the terms of~~ any lease-purchase agreement between
376 the authority and the department; and in general to provide for
377 the security of the said bonds and the rights and remedies of

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378 the holders thereof. ~~Provided, However, that~~ no portion of the
379 Orange County gasoline tax funds ~~may shall~~ be pledged for the
380 construction of any project for which a toll is to be charged
381 unless the anticipated toll is ~~tolls are~~ reasonably estimated by
382 the board of county commissioners, at the date of its resolution
383 pledging the said funds, to be sufficient to cover the principal
384 and interest of such obligations during the period when the said
385 pledge of funds is shall be in effect. The bonds issued under
386 this paragraph must mature not more than 40 years after their
387 issue date.

388 1. The authority shall reimburse Orange County for any sums
389 expended from the said gasoline tax funds used for the payment
390 of such obligations. Any gasoline tax funds so disbursed must
391 ~~shall~~ be repaid when the authority deems it practicable,
392 together with interest at the highest rate applicable to any
393 obligations of the authority.

394 2. If, pursuant to this section, In the event the authority
395 funds shall determine to fund or refunds refund any bonds
396 previously theretofore issued by the said authority, or the by
397 said commission before the bonds mature as ~~aforesaid prior to~~
398 ~~the maturity thereof~~, the proceeds of such funding or refunding
399 must bonds shall, pending the prior redemption of these the
400 ~~bonds to be funded or refunded~~, be invested in direct
401 obligations of the United States, ~~and it is the express~~
402 ~~intention of this part that such outstanding bonds may be funded~~
403 ~~or refunded by the issuance of bonds pursuant to this part.~~

404 (h) To make contracts ~~of every name and nature~~, including,
405 but not limited to, partnerships providing for participation in
406 ownership and revenues, and to execute all instruments necessary

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407 or convenient for conducting ~~the carrying on~~ of its business.

408 (i) Notwithstanding paragraphs (a)-(h), ~~Without limitation~~
409 ~~of the foregoing~~, to borrow money and accept grants from, and to
410 enter into contracts, leases, or other transactions with any
411 federal agency, the state, any agency of the state, the County
412 of Orange, the City of Orlando, or with any other public body of
413 the state.

414 (j) To have the power of eminent domain, including the
415 procedural powers granted under both chapters 73 and 74.

416 (k) To pledge, hypothecate, or otherwise encumber ~~all or~~
417 any part of the revenues, rates, fees, rentals, or other charges
418 or receipts of the authority, including all or any portion of
419 the Orange County gasoline tax funds received by the authority
420 pursuant to the terms of any lease-purchase agreement between
421 the authority and the department, as security for ~~all or~~ any of
422 the obligations of the authority.

423 (l) To enter into partnership and other agreements
424 respecting ownership and revenue participation in order to
425 facilitate financing and constructing the Western Beltway, or
426 portions thereof.

427 (m) To do everything ~~all acts and things~~ necessary or
428 convenient for the conduct of its business and the general
429 welfare of the authority, in order to comply with ~~carry out the~~
430 ~~powers granted to it by~~ this part or any other law.

431 (n) With the consent of the county within whose
432 jurisdiction the following activities occur, the authority shall
433 have the right to construct, operate, and maintain roads,
434 bridges, avenues of access, transportation facilities,
435 thoroughfares, and boulevards outside the jurisdictional

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436 boundaries of Orange, Seminole, Lake, and Osceola Counties
437 ~~County~~, together with the right to construct, repair, replace,
438 operate, install, and maintain electronic toll payment systems
439 thereon, ~~with all necessary and incidental powers to accomplish~~
440 ~~the foregoing.~~

441 (3) The authority does not ~~shall~~ have the ~~no~~ power ~~at any~~
442 ~~time or in any manner~~ to pledge the credit or taxing power of
443 the state or any political subdivision or agency thereof,
444 including any city and any county ~~the City of Orlando and the~~
445 ~~County of Orange, nor may nor shall~~ any of the authority's
446 obligations be deemed to be obligations of the state or of any
447 political subdivision or agency thereof, nor may ~~nor shall~~ the
448 state or any political subdivision or agency thereof, except the
449 authority, be liable for the payment of the principal of or
450 interest on such obligations.

451 ~~(4) Anything in this part to the contrary notwithstanding,~~
452 ~~acquisition of right of way for a project of the authority which~~
453 ~~is within the boundaries of any municipality in Orange County~~
454 ~~shall not be begun unless and until the route of said project~~
455 ~~within said municipality has been given prior approval by the~~
456 ~~governing body of said municipality.~~

457 ~~(4)(5)~~ The authority has ~~shall have~~ no power other than by
458 consent of an affected ~~Orange~~ county or any affected city, to
459 enter into any agreement which would legally prohibit the
460 construction of a any road by the respective county or city
461 ~~Orange County or by any city within Orange County.~~

462 (5) The authority shall encourage the inclusion of local-,
463 small-, minority-, and women-owned businesses in its procurement
464 and contracting opportunities.

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465 (6) ~~(a)~~ The authority may, within the right-of-way of the
466 expressway system, finance or refinance the planning, design,
467 acquisition, construction, extension, rehabilitation, equipping,
468 preservation, maintenance, or improvement of an intermodal
469 facility or facilities, a multimodal corridor or corridors, or
470 any programs or projects that will improve the levels of service
471 on the expressway system ~~Notwithstanding s. 255.05, the Orlando-~~
472 ~~Orange County Expressway Authority may waive payment and~~
473 ~~performance bonds on construction contracts for the construction~~
474 ~~of a public building, for the prosecution and completion of a~~
475 ~~public work, or for repairs on a public building or public work~~
476 ~~that has a cost of \$500,000 or less and when the project is~~
477 ~~awarded pursuant to an economic development program for the~~
478 ~~encouragement of local small businesses that has been adopted by~~
479 ~~the governing body of the Orlando-Orange County Expressway~~
480 ~~Authority pursuant to a resolution or policy.~~

481 ~~(b) The authority's adopted criteria for participation in~~
482 ~~the economic development program for local small businesses~~
483 ~~requires that a participant:~~

- 484 1. ~~Be an independent business.~~
- 485 2. ~~Be principally domiciled in the Orange County Standard~~
486 ~~Metropolitan Statistical Area.~~
- 487 3. ~~Employ 25 or fewer full-time employees.~~
- 488 4. ~~Have gross annual sales averaging \$3 million or less~~
489 ~~over the immediately preceding 3 calendar years with regard to~~
490 ~~any construction element of the program.~~
- 491 5. ~~Be accepted as a participant in the Orlando-Orange~~
492 ~~County Expressway Authority's microcontracts program or such~~
493 ~~other small business program as may be hereinafter enacted by~~

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494 ~~the Orlando Orange County Expressway Authority.~~

495 ~~6. Participate in an educational curriculum or technical~~
496 ~~assistance program for business development that will assist the~~
497 ~~small business in becoming eligible for bonding.~~

498 ~~(c) The authority's adopted procedures for waiving payment~~
499 ~~and performance bonds on projects with values not less than~~
500 ~~\$200,000 and not exceeding \$500,000 shall provide that payment~~
501 ~~and performance bonds may only be waived on projects that have~~
502 ~~been set aside to be competitively bid on by participants in an~~
503 ~~economic development program for local small businesses. The~~
504 ~~authority's executive director or his or her designee shall~~
505 ~~determine whether specific construction projects are suitable~~
506 ~~for:~~

507 ~~1. Bidding under the authority's microcontracts program by~~
508 ~~registered local small businesses; and~~

509 ~~2. Waiver of the payment and performance bond.~~

510
511 ~~The decision of the authority's executive director or deputy~~
512 ~~executive director to waive the payment and performance bond~~
513 ~~shall be based upon his or her investigation and conclusion that~~
514 ~~there exists sufficient competition so that the authority~~
515 ~~receives a fair price and does not undertake any unusual risk~~
516 ~~with respect to such project.~~

517 ~~(d) For any contract for which a payment and performance~~
518 ~~bond has been waived pursuant to the authority set forth in this~~
519 ~~section, the Orlando Orange County Expressway Authority shall~~
520 ~~pay all persons defined in s. 713.01 who furnish labor,~~
521 ~~services, or materials for the prosecution of the work provided~~
522 ~~for in the contract to the same extent and upon the same~~

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523 ~~conditions that a surety on the payment bond under s. 255.05~~
524 ~~would have been obligated to pay such persons if the payment and~~
525 ~~performance bond had not been waived. The authority shall record~~
526 ~~notice of this obligation in the manner and location that surety~~
527 ~~bonds are recorded. The notice shall include the information~~
528 ~~describing the contract that s. 255.05(1) requires be stated on~~
529 ~~the front page of the bond. Notwithstanding that s. 255.05(9)~~
530 ~~generally applies when a performance and payment bond is~~
531 ~~required, s. 255.05(9) shall apply under this subsection to any~~
532 ~~contract on which performance or payment bonds are waived and~~
533 ~~any claim to payment under this subsection shall be treated as a~~
534 ~~contract claim pursuant to s. 255.05(9).~~

535 ~~(c) A small business that has been the successful bidder on~~
536 ~~six projects for which the payment and performance bond was~~
537 ~~waived by the authority pursuant to paragraph (a) shall be~~
538 ~~ineligible to bid on additional projects for which the payment~~
539 ~~and performance bond is to be waived. The local small business~~
540 ~~may continue to participate in other elements of the economic~~
541 ~~development program for local small businesses as long as it is~~
542 ~~eligible.~~

543 ~~(f) The authority shall conduct bond eligibility training~~
544 ~~for businesses qualifying for bond waiver under this subsection~~
545 ~~to encourage and promote bond eligibility for such businesses.~~

546 ~~(g) The authority shall prepare a biennial report on the~~
547 ~~activities undertaken pursuant to this subsection to be~~
548 ~~submitted to the Orange County legislative delegation. The~~
549 ~~initial report shall be due December 31, 2010.~~

550 Section 5. Section 348.7543, Florida Statutes, is amended
551 to read:

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552 348.7543 Improvements, bond financing authority for.—
553 Pursuant to s. 11(f), Art. VII of the State Constitution, the
554 Legislature ~~hereby~~ approves for bond financing by the Central
555 Florida ~~Orlando-Orange County~~ Expressway Authority improvements
556 to toll collection facilities, interchanges to the legislatively
557 approved expressway system, and any other facility appurtenant,
558 necessary, or incidental to the approved system. Subject to
559 terms and conditions of applicable revenue bond resolutions and
560 covenants, such costs may be financed in whole or in part by
561 revenue bonds issued pursuant to s. 348.755(1)(a) or (b) whether
562 currently issued or issued in the future, or by a combination of
563 such bonds.

564 Section 6. Section 348.7544, Florida Statutes, is amended
565 to read:

566 348.7544 Northwest Beltway Part A, construction authorized;
567 financing.—Notwithstanding s. 338.2275, the Central Florida
568 ~~Orlando-Orange County~~ Expressway Authority may ~~is hereby~~
569 ~~authorized to~~ construct, finance, operate, own, and maintain
570 that portion of the Western Beltway known as the Northwest
571 Beltway Part A, extending from Florida's Turnpike near Ocoee
572 north to U.S. 441 near Apopka, as part of the authority's 20-
573 year capital projects plan. This project may be financed with
574 any funds available to the authority for such purpose or revenue
575 bonds issued by the Division of Bond Finance of the State Board
576 of Administration on behalf of the authority pursuant to s. 11,
577 Art. VII of the State Constitution and the State Bond Act, ss.
578 215.57-215.83.

579 Section 7. Section 348.7545, Florida Statutes, is amended
580 to read:

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581 348.7545 Western Beltway Part C, construction authorized;
582 financing.—Notwithstanding s. 338.2275, the Central Florida
583 ~~Orlando-Orange County~~ Expressway Authority may ~~is authorized to~~
584 exercise its condemnation powers, construct, finance, operate,
585 own, and maintain that portion of the Western Beltway known as
586 the Western Beltway Part C, extending from Florida's Turnpike
587 near Ocoee in Orange County southerly through Orange and Osceola
588 Counties to an interchange with I-4 near the Osceola-Polk County
589 line, as part of the authority's 20-year capital projects plan.
590 This project may be financed with any funds available to the
591 authority for such purpose or revenue bonds issued by the
592 Division of Bond Finance of the State Board of Administration on
593 behalf of the authority pursuant to s. 11, Art. VII of the State
594 Constitution and the State Bond Act, ss. 215.57-215.83. This
595 project may be refinanced with bonds issued by the authority
596 pursuant to s. 348.755(1)(d).

597 Section 8. Section 348.7546, Florida Statutes, is amended
598 to read:

599 348.7546 Wekiva Parkway, construction authorized;
600 financing.—

601 (1) The Central Florida ~~Orlando-Orange County~~ Expressway
602 Authority may ~~is authorized to~~ exercise its condemnation powers
603 and to construct, finance, operate, own, and maintain those
604 portions of the Wekiva Parkway which are identified by agreement
605 between the authority and the department and which are included
606 as part of the authority's long-range capital improvement plan.
607 The "Wekiva Parkway" means any limited access highway or
608 expressway constructed between State Road 429 and Interstate 4
609 specifically incorporating the corridor alignment recommended by

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610 Recommendation 2 of the Wekiva River Basin Area Task Force final
611 report dated January 15, 2003, and the recommendations of the SR
612 429 Working Group which were adopted January 16, 2004. This
613 project may be financed with any funds available to the
614 authority for such purpose or revenue bonds issued by the
615 authority under s. 11, Art. VII of the State Constitution and s.
616 348.755(1)(b). This section does not invalidate the exercise by
617 the authority of its condemnation powers or the acquisition of
618 any property for the Wekiva Parkway before July 1, 2012.

619 (2) Notwithstanding any other provision of law ~~to the~~
620 ~~contrary~~, in order to ensure that funds are available to the
621 department for its portion of the Wekiva Parkway, beginning July
622 1, 2012, the authority shall repay the expenditures by the
623 department for costs of operation and maintenance of the Central
624 Florida Orlando-Orange County Expressway System in accordance
625 with the terms of the memorandum of understanding between the
626 authority and the department as ratified by the authority board
627 on February 22, 2012, which requires the authority to pay the
628 department \$10 million on July 1, 2012, and \$20 million on each
629 successive July 1 until the department has been fully reimbursed
630 for all costs of the Central Florida Orlando-Orange County
631 Expressway System which were paid, advanced, or reimbursed to
632 the authority by the department, with a final payment in the
633 amount of the balance remaining. Notwithstanding any other law
634 ~~to the contrary~~, the funds paid to the department pursuant to
635 this subsection must ~~shall~~ be allocated by the department for
636 construction of the Wekiva Parkway.

637 (3) The department's obligation to construct its portions
638 of the Wekiva Parkway is contingent upon the timely payment by

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639 the authority of the annual payments required of the authority
640 and receipt of all required environmental permits and approvals
641 by the Federal Government.

642 Section 9. Section 348.7547, Florida Statutes, is amended
643 to read:

644 348.7547 Maitland Boulevard Extension and Northwest Beltway
645 Part A Realignment construction authorized; financing.—
646 Notwithstanding s. 338.2275, the Central Florida Orlando-Orange
647 County Expressway Authority may ~~is hereby authorized to~~ exercise
648 its condemnation powers, construct, finance, operate, own, and
649 maintain the portion of State Road 414 known as the Maitland
650 Boulevard Extension and the realigned portion of the Northwest
651 Beltway Part A as part of the authority's long-range capital
652 improvement plan. The Maitland Boulevard Extension extends ~~will~~
653 ~~extend~~ from the current terminus of State Road 414 at U.S. 441
654 west to State Road 429 in west Orange County. The realigned
655 portion of the Northwest Beltway Part A runs ~~will run~~ from the
656 point at or near where the Maitland Boulevard Extension connects
657 ~~will connect~~ with State Road 429 and proceeds ~~will proceed~~ to
658 the west and then north resulting in the northern terminus of
659 State Road 429 moving farther west before reconnecting with U.S.
660 441. However, under no circumstances may ~~shall~~ the realignment
661 of the Northwest Beltway Part A conflict with or contradict ~~with~~
662 the alignment of the Wekiva Parkway as defined in s. 348.7546.
663 This project may be financed with any funds available to the
664 authority for such purpose or revenue bonds issued by the
665 authority under s. 11, Art. VII of the State Constitution and s.
666 348.755(1)(b).

667 Section 10. Subsections (2) and (3) of section 348.755,

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668 Florida Statutes, are amended to read:

669 348.755 Bonds of the authority.—

670 (2) Any ~~such~~ resolution that authorizes ~~or resolutions~~
671 ~~authorizing~~ any bonds issued under this section ~~hereunder~~ may
672 contain provisions that must ~~which shall~~ be part of the contract
673 with the holders of such bonds, relating ~~as~~ to:

674 (a) The pledging of ~~all or~~ any part of the revenues, rates,
675 fees, rentals, ~~(including all or~~ any portion of the Orange
676 County gasoline tax funds received by the authority pursuant to
677 the terms of any lease-purchase agreement between the authority
678 and the department, or any part thereof), or other charges or
679 receipts of the authority, derived by the authority, from the
680 Central Florida ~~Orlando-Orange County~~ Expressway System.

681 (b) The completion, improvement, operation, extension,
682 maintenance, repair, lease or lease-purchase agreement of the
683 ~~said~~ system, and the duties of the authority and others,
684 including the department, ~~with reference thereto~~.

685 (c) Limitations on the purposes to which the proceeds of
686 the bonds, then or thereafter to be issued, or of any loan or
687 grant by the United States or the state may be applied.

688 (d) The fixing, charging, establishing, and collecting of
689 rates, fees, rentals, or other charges for use of the services
690 and facilities of the Central Florida ~~Orlando-Orange County~~
691 Expressway System or any part thereof.

692 (e) The setting aside of reserves or sinking funds or
693 repair and replacement funds and the regulation and disposition
694 thereof.

695 (f) Limitations on the issuance of additional bonds.

696 (g) The terms and provisions of any lease-purchase

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697 agreement, deed of trust or indenture securing the bonds, or
698 under which the same may be issued.

699 (h) Any other or additional agreements with the holders of
700 the bonds which the authority may deem desirable and proper.

701 (3) The authority may employ fiscal agents as provided by
702 this part or the State Board of Administration of Florida may
703 upon request of the authority act as fiscal agent for the
704 authority in the issuance of any bonds that ~~which~~ may be issued
705 pursuant to this part, and the State Board of Administration may
706 upon request of the authority take over the management, control,
707 administration, custody, and payment of any ~~or all~~ debt services
708 or funds or assets now or hereafter available for any bonds
709 issued pursuant to this part. The authority may enter into any
710 deeds of trust, indentures or other agreements with its fiscal
711 agent, or with any bank or trust company within or without the
712 state, as security for such bonds, and may, under such
713 agreements, sign and pledge ~~all or~~ any of the revenues, rates,
714 fees, rentals or other charges or receipts of the authority,
715 including ~~all or~~ any portion of the Orange County gasoline tax
716 funds received by the authority pursuant to the terms of any
717 lease-purchase agreement between the authority and the
718 department, ~~thereunder~~. Such deed of trust, indenture, or other
719 agreement may contain such provisions as are customary in such
720 instruments, or, as the authority may authorize, including but
721 without limitation, provisions as to:

722 (a) The completion, improvement, operation, extension,
723 maintenance, repair, and lease of, or lease-purchase agreement
724 relating to the Central Florida ~~Orlando-Orange County~~ Expressway
725 System, and the duties of the authority and others including the

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726 department, with reference thereto.

727 (b) The application of funds and the safeguarding of funds
728 on hand or on deposit.

729 (c) The rights and remedies of the trustee and the holders
730 of the bonds.

731 (d) The terms and provisions of the bonds or the
732 resolutions authorizing the issuance of same.

733 Section 11. Subsections (3) and (4) of section 348.756,
734 Florida Statutes, are amended to read:

735 348.756 Remedies of the bondholders.-

736 (3) When a ~~Any~~ trustee is ~~when~~ appointed pursuant to
737 subsection (1) as aforesaid, or is acting under a deed of trust,
738 indenture, or other agreement, and whether or not all bonds have
739 been declared due and payable, the trustee is ~~shall be~~ entitled
740 ~~as of right~~ to the appointment of a receiver, who may enter upon
741 and take possession of the Central Florida Orlando-Orange County
742 Expressway System or the facilities or any part of the system or
743 facilities ~~or parts thereof,~~ the rates, fees, rentals, or other
744 revenues, charges, or receipts that ~~from which~~ are, or may be,
745 applicable to the payment of the bonds so in default, and
746 subject to and in compliance with the provisions of any lease-
747 purchase agreement between the authority and the department
748 operate and maintain the same, for and on behalf of and in the
749 name of, the authority, the department, and the bondholders, and
750 collect and receive all rates, fees, rentals, and other charges
751 or receipts or revenues arising therefrom in the same manner as
752 the authority or the department might do, and shall deposit all
753 such moneys in a separate account and apply the same in such
754 manner as the court directs ~~shall direct~~. In any suit, action,

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755 or proceeding by the trustee, the fees, counsel fees, and
756 expenses of the trustee, and the ~~said~~ receiver, if any, and all
757 costs and disbursements allowed by the court must ~~shall~~ be a
758 first charge on any rates, fees, rentals, or other charges,
759 revenues, or receipts, derived from the Central Florida ~~Orlando-~~
760 ~~Orange County~~ Expressway System, or the facilities or services
761 or any part of the system or facilities ~~or parts thereof~~,
762 including payments under any such lease-purchase agreement ~~as~~
763 ~~aforsaid~~ which ~~said~~ rates, fees, rentals, or other charges,
764 revenues, or receipts ~~shall~~ ~~or~~ may be applicable to the payment
765 of the bonds that are ~~so~~ in default. The ~~Such~~ trustee has ~~shall~~,
766 ~~in addition to the foregoing, have and possess~~ all of the powers
767 necessary or appropriate for the exercise of any functions
768 specifically set forth in this section ~~herein~~ or incident to the
769 representation of the bondholders in the enforcement and
770 protection of their rights.

771 (4) ~~Nothing in~~ This section or any other section of this
772 part does not ~~shall~~ authorize any receiver appointed pursuant
773 ~~hereto~~ for the purpose, subject to and in compliance with the
774 provisions of any lease-purchase agreement between the authority
775 and the department, of operating and maintaining the Central
776 Florida ~~Orlando-Orange County~~ Expressway System or any
777 facilities or part of the system or facilities ~~or parts thereof~~,
778 to sell, assign, mortgage, or otherwise dispose of any of the
779 assets of whatever kind and character belonging to the
780 authority. ~~It is the intention of this part to limit~~ The powers
781 of the ~~such~~ receiver, subject to and in compliance with the
782 provisions of any lease-purchase agreement between the authority
783 and the department, are limited to the operation and maintenance

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784 of the Central Florida ~~Orlando-Orange County~~ Expressway System,
785 or any facility, or part ~~or parts~~ thereof, as the court may
786 direct, in the name and for and on behalf of the authority, the
787 department, and the bondholders, and no holder of bonds on the
788 authority nor any trustee, has ~~shall ever have~~ the right in any
789 suit, action, or proceeding at law or in equity, to compel a
790 receiver, nor may ~~shall~~ any receiver be authorized or any court
791 be empowered to direct the receiver to sell, assign, mortgage,
792 or otherwise dispose of any assets ~~of whatever kind or character~~
793 belonging to the authority.

794 Section 12. Subsections (1) through (7) of section 348.757,
795 Florida Statutes, are amended to read:

796 348.757 Lease-purchase agreement.—

797 (1) ~~In order to effectuate the purposes of this part and as~~
798 ~~authorized by this part~~, The authority may enter into a lease-
799 purchase agreement with the department relating to and covering
800 the former Orlando-Orange County Expressway System.

801 (2) The ~~Such~~ lease-purchase agreement must ~~shall~~ provide
802 for the leasing of the former Orlando-Orange County Expressway
803 System, by the authority, as lessor, to the department, as
804 lessee, must ~~shall~~ prescribe the term of such lease and the
805 rentals to be paid thereunder, and must ~~shall~~ provide that upon
806 the completion of the faithful performance ~~thereunder~~ and the
807 termination of the ~~such~~ lease-purchase agreement, title in fee
808 simple absolute to the former Orlando-Orange County Expressway
809 System as then constituted shall be transferred in accordance
810 with law by the authority, to the state and the authority shall
811 deliver to the department such deeds and conveyances as shall be
812 necessary or convenient to vest title in fee simple absolute in

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813 the state.

814 (3) The ~~Such~~ lease-purchase agreement may include ~~such~~
815 other provisions, agreements, and covenants that ~~as~~ the
816 authority and the department deem advisable or required,
817 including, but not limited to, provisions as to the bonds to be
818 issued under, and for the purposes of, this part, the
819 completion, extension, improvement, operation, and maintenance
820 of the former Orlando-Orange County Expressway System and the
821 expenses and the cost of operation of the ~~said~~ authority, the
822 charging and collection of tolls, rates, fees, and other charges
823 for the use of the services and facilities of the system
824 ~~thereof~~, the application of federal or state grants or aid that
825 ~~which~~ may be made or given to assist the authority in the
826 completion, extension, improvement, operation, and maintenance
827 of the former Orlando-Orange County ~~Orlando~~ Expressway System,
828 which the authority is ~~hereby~~ authorized to accept and apply to
829 such purposes, the enforcement of payment and collection of
830 rentals and any other terms, provisions, or covenants necessary,
831 incidental, or appurtenant to the making of and full performance
832 under the ~~such~~ lease-purchase agreement.

833 (4) The department as lessee under the ~~such~~ lease-purchase
834 agreement, may ~~is hereby authorized to~~ pay as rentals under the
835 agreement ~~thereunder~~ any rates, fees, charges, funds, moneys,
836 receipts, or income accruing to the department from the
837 operation of the former Orlando-Orange County Expressway System
838 and the Orange County gasoline tax funds and may also pay as
839 rentals any appropriations received by the department pursuant
840 to any act of the Legislature of the state heretofore or
841 hereafter enacted; ~~provided,~~ however, this part or the ~~that~~

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842 ~~nothing herein nor in such~~ lease-purchase agreement is not
843 intended to and does not ~~nor shall this part or such lease-~~
844 ~~purchase agreement~~ require the making or continuance of such
845 appropriations, and ~~nor shall~~ any holder of bonds issued
846 pursuant to this part does not ~~ever~~ have any right to compel the
847 making or continuance of such appropriations.

848 (5) A ~~No~~ pledge of the said Orange County gasoline tax
849 funds as rentals under a ~~such~~ lease-purchase agreement may not
850 ~~shall~~ be made without the consent of the County of Orange
851 evidenced by a resolution duly adopted by the board of county
852 commissioners of said county at a public hearing held pursuant
853 to due notice thereof published at least once a week for 3
854 consecutive weeks before the hearing in a newspaper of general
855 circulation in Orange County. The ~~Said~~ resolution, among other
856 things, must ~~shall~~ provide that any excess of the said pledged
857 gasoline tax funds which is not required for debt service or
858 reserves for the ~~such~~ debt service for any bonds issued by the
859 ~~said~~ authority shall be returned annually to the department for
860 distribution to Orange County as provided by law. Before making
861 any application for a ~~such~~ pledge of gasoline tax funds, the
862 authority shall present the plan of its proposed project to the
863 Orange County planning and zoning commission for its comments
864 and recommendations.

865 (6) The ~~Said~~ department may ~~shall have power to~~ covenant in
866 any lease-purchase agreement that it will pay all or any part of
867 the cost of the operation, maintenance, repair, renewal, and
868 replacement of the said system, and any part of the cost of
869 completing the said system to the extent that the proceeds of
870 bonds issued ~~therefor~~ are insufficient, from sources other than

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871 the revenues derived from the operation of the ~~said~~ system and
872 the ~~said~~ Orange County gasoline tax funds. The ~~said~~ department
873 may also agree to make such other payments from any moneys
874 available to the ~~said~~ commission, the ~~said~~ county, or the ~~said~~
875 city in connection with the construction or completion of the
876 ~~said~~ system as shall be deemed by the ~~said~~ department to be fair
877 and proper under any ~~such~~ covenants ~~heretofore or hereafter~~
878 entered into.

879 (7) The ~~said~~ system must ~~shall~~ be a part of the state road
880 system and the ~~said~~ department may ~~is hereby authorized,~~ upon
881 the request of the authority, ~~to~~ expend out of any funds
882 available for the purpose the ~~such~~ moneys, and ~~to~~ use ~~such~~ of
883 its engineering and other forces, as may be necessary and
884 ~~desirable in the judgment of said department,~~ for the operation
885 of the ~~said~~ authority and for traffic surveys, borings, surveys,
886 preparation of plans and specifications, estimates of cost, and
887 other preliminary engineering and other studies; provided,
888 however, that the aggregate amount of moneys expended for the
889 ~~said~~ purposes by the ~~said~~ department do ~~shall~~ not exceed the sum
890 of \$375,000.

891 Section 13. Section 348.758, Florida Statutes, is amended
892 to read:

893 348.758 Appointment of department as ~~may be appointed~~ agent
894 of authority for construction.—The department may be appointed
895 by the ~~said~~ authority as its agent for the purpose of
896 constructing improvements and extensions to the Central Florida
897 ~~Orlando-Orange County~~ Expressway System and for its ~~the~~
898 completion ~~thereof~~. In such event, the authority shall provide
899 the department with complete copies of all documents,

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900 agreements, resolutions, contracts, and instruments relating
 901 thereto and shall request the department to do such construction
 902 work, including the planning, surveying, and actual construction
 903 of the completion, extensions, and improvements to the Central
 904 Florida Orlando-Orange County Expressway System and shall
 905 transfer to the credit of an account of the department in the
 906 State Treasury ~~of the state~~ the necessary funds, ~~therefor~~ and
 907 the department may ~~shall thereupon be authorized, empowered and~~
 908 ~~directed to~~ proceed with such construction and ~~to~~ use the ~~said~~
 909 funds for such purpose in the same manner that it is ~~now~~
 910 authorized to use the funds ~~otherwise provided by law~~ for the
 911 ~~its use in~~ construction of roads and bridges.

912 Section 14. Section 348.759, Florida Statutes, is amended
 913 to read:

914 348.759 Acquisition of lands and property.-

915 (1) For the purposes of this part, the Central Florida
 916 ~~Orlando-Orange County~~ Expressway Authority may acquire private
 917 or public property and property rights, including rights of
 918 access, air, view, and light, by gift, devise, purchase, or
 919 condemnation by eminent domain proceedings, as the authority
 920 deems ~~may deem~~ necessary for any of the purposes of this part,
 921 including, but not limited to, any lands reasonably necessary
 922 for securing applicable permits, areas necessary for management
 923 of access, borrow pits, drainage ditches, water retention areas,
 924 rest areas, replacement access for landowners whose access is
 925 impaired due to the construction of a facility, and replacement
 926 rights-of-way for relocated rail and utility facilities; for
 927 existing, proposed, or anticipated transportation facilities on
 928 the Central Florida ~~Orlando-Orange County~~ Expressway System or

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929 in a transportation corridor designated by the authority; or for
930 the purposes of screening, relocation, removal, or disposal of
931 junkyards and scrap metal processing facilities. The authority
932 ~~may shall also have the power to~~ condemn any material and
933 property necessary for such purposes.

934 (2) The ~~right of eminent domain herein conferred shall be~~
935 ~~exercised by the authority~~ shall exercise the right of eminent
936 domain in the manner provided by law.

937 (3) When the authority acquires property for a
938 transportation facility or in a transportation corridor, it is
939 not subject to any liability imposed by chapter 376 or chapter
940 403 for preexisting soil or groundwater contamination due solely
941 to its ownership. This section does not affect the rights or
942 liabilities of any past or future owners of the acquired
943 property and ~~nor~~ does not ~~it~~ affect the liability of any
944 governmental entity for the results of its actions which create
945 or exacerbate a pollution source. The authority and the
946 Department of Environmental Protection may enter into
947 interagency agreements for the performance, funding, and
948 reimbursement of the investigative and remedial acts necessary
949 for property acquired by the authority.

950 Section 15. Section 348.760, Florida Statutes, is amended
951 to read:

952 348.760 Cooperation with other units, boards, agencies, and
953 individuals. ~~A Express authority and power is hereby given and~~
954 ~~granted any~~ county, municipality, drainage district, road and
955 bridge district, school district or any other political
956 subdivision, board, commission, or individual in, or of, the
957 state may ~~to~~ make and enter into with the authority, contracts,

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958 leases, conveyances, partnerships, or other agreements pursuant
959 to ~~within the provisions and purposes of~~ this part. The
960 authority may ~~is hereby expressly authorized to~~ make and enter
961 into contracts, leases, conveyances, partnerships, and other
962 agreements with any political subdivision, agency, or
963 instrumentality of the state and any ~~and all~~ federal agencies,
964 corporations, and individuals, for the purpose of carrying out
965 the provisions of this part ~~or with the consent of the Seminole~~
966 ~~County Expressway Authority, for the purpose of carrying out and~~
967 ~~implementing part VIII of this chapter.~~

968 Section 16. Section 348.761, Florida Statutes, is amended
969 to read:

970 348.761 Covenant of the state.—The state pledges ~~does~~
971 ~~hereby pledge~~ to, and agrees, with any person, firm or
972 corporation, or federal or state agency subscribing to, or
973 acquiring the bonds to be issued by the authority for the
974 purposes of this part that the state will not limit or alter the
975 rights that are ~~hereby~~ vested in the authority and the
976 department until all issued bonds and interest ~~at any time~~
977 ~~issued, together with the interest thereon,~~ are fully paid and
978 discharged insofar as the pledge ~~same~~ affects the rights of the
979 holders of bonds issued pursuant to this part ~~hereunder~~. The
980 state does further pledge to, and agree, with the United States
981 that in the event any federal agency constructs or contributes
982 ~~shall construct or contribute~~ any funds for the completion,
983 extension, or improvement of the Central Florida Orlando-Orange
984 ~~County~~ Expressway System, or any part or portion of the system
985 ~~thereof~~, the state will not alter or limit the rights and powers
986 of the authority and the department in any manner that ~~which~~

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987 would be inconsistent with the continued maintenance and
988 operation of the Central Florida ~~Orlando-Orange County~~
989 Expressway System or the completion, extension, or improvement
990 of the system thereof, or that ~~which~~ would be inconsistent with
991 the due performance of any agreements between the authority and
992 any such federal agency, and the authority and the department
993 shall continue to have and may exercise all powers ~~herein~~
994 granted in this part, so long as the powers are ~~same shall be~~
995 necessary or desirable for the carrying out of the purposes of
996 this part and the purposes of the United States in the
997 completion, extension, or improvement of the Central Florida
998 ~~Orlando-Orange County~~ Expressway System, or any part of the
999 system ~~or portion thereof~~.

1000 Section 17. Section 348.765, Florida Statutes, is amended
1001 to read:

1002 348.765 This part complete and additional authority.-

1003 (1) The powers conferred by this part are ~~shall be~~ in
1004 addition and supplemental to the existing powers of the said
1005 board and the department, and this part may ~~shall~~ not be
1006 construed as repealing any of the provisions, of any other law,
1007 general, special, or local, but to supersede such other laws in
1008 the exercise of the powers provided in this part, and to provide
1009 a complete method for the exercise of the powers granted in this
1010 part. The extension and improvement of the Central Florida ~~said~~
1011 ~~Orlando-Orange County~~ Expressway System, and the issuance of
1012 bonds pursuant to this part hereunder to finance all or part of
1013 the cost of the system thereof, may be accomplished upon
1014 compliance with the provisions of this part without regard to or
1015 necessity for compliance with the provisions, limitations, or

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1016 restrictions contained in any other general, special, or local
1017 law, including, but not limited to, s. 215.821, and no approval
1018 of any bonds issued under this part by the qualified electors or
1019 qualified electors who are freeholders in the state or in the
1020 ~~said~~ County of Orange, or in the ~~said~~ City of Orlando, or in any
1021 other political subdivision of the state, is ~~shall be~~ required
1022 for the issuance of such bonds pursuant to this part.

1023 (2) This part does ~~shall not be deemed to~~ repeal, rescind,
1024 or modify any other law ~~or laws~~ relating to the ~~said~~ State Board
1025 of Administration, the ~~said~~ Department of Transportation, or the
1026 Division of Bond Finance of the State Board of Administration,
1027 but supersedes any ~~shall be deemed to and shall supersede such~~
1028 ~~other law that is or laws as~~ are inconsistent with the
1029 provisions of this part, including, but not limited to, s.
1030 215.821.

1031 Section 18. Subsections (6) and (7) of section 369.317,
1032 Florida Statutes, are amended to read:

1033 369.317 Wekiva Parkway.—

1034 (6) The Central Florida ~~Orlando-Orange County~~ Expressway
1035 Authority is hereby granted the authority to act as a third-
1036 party acquisition agent, pursuant to s. 259.041 on behalf of the
1037 Board of Trustees or chapter 373 on behalf of the governing
1038 board of the St. Johns River Water Management District, for the
1039 acquisition of all necessary lands, property and all interests
1040 in property identified herein, including fee simple or less-
1041 than-fee simple interests. The lands subject to this authority
1042 are identified in paragraph 10.a., State of Florida, Office of
1043 the Governor, Executive Order 03-112 of July 1, 2003, and in
1044 Recommendation 16 of the Wekiva Basin Area Task Force created by

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1045 Executive Order 2002-259, such lands otherwise known as
1046 Neighborhood Lakes, a 1,587+/-acre parcel located in Orange and
1047 Lake Counties within Sections 27, 28, 33, and 34 of Township 19
1048 South, Range 28 East, and Sections 3, 4, 5, and 9 of Township 20
1049 South, Range 28 East; Seminole Woods/Swamp, a 5,353+/-acre
1050 parcel located in Lake County within Section 37, Township 19
1051 South, Range 28 East; New Garden Coal; a 1,605+/-acre parcel in
1052 Lake County within Sections 23, 25, 26, 35, and 36, Township 19
1053 South, Range 28 East; Pine Plantation, a 617+/-acre tract
1054 consisting of eight individual parcels within the Apopka City
1055 limits. The Department of Transportation, the Department of
1056 Environmental Protection, the St. Johns River Water Management
1057 District, and other land acquisition entities shall participate
1058 and cooperate in providing information and support to the third-
1059 party acquisition agent. The land acquisition process authorized
1060 by this paragraph shall begin no later than December 31, 2004.
1061 Acquisition of the properties identified as Neighborhood Lakes,
1062 Pine Plantation, and New Garden Coal, or approval as a
1063 mitigation bank shall be concluded no later than December 31,
1064 2010. Department of Transportation and Central Florida ~~Orlando-~~
1065 ~~Orange County~~ Expressway Authority funds expended to purchase an
1066 interest in those lands identified in this subsection shall be
1067 eligible as environmental mitigation for road construction
1068 related impacts in the Wekiva Study Area. If any of the lands
1069 identified in this subsection are used as environmental
1070 mitigation for road-construction-related impacts incurred by the
1071 Department of Transportation or Central Florida ~~Orlando-Orange~~
1072 ~~County~~ Expressway Authority, or for other impacts incurred by
1073 other entities, within the Wekiva Study Area or within the

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1074 Wekiva parkway alignment corridor, and if the mitigation offsets
1075 these impacts, the St. Johns River Water Management District and
1076 the Department of Environmental Protection shall consider the
1077 activity regulated under part IV of chapter 373 to meet the
1078 cumulative impact requirements of s. 373.414(8) (a).

1079 (a) Acquisition of the land described in this section is
1080 required to provide right-of-way for the Wekiva Parkway, a
1081 limited access roadway linking State Road 429 to Interstate 4,
1082 an essential component in meeting regional transportation needs
1083 to provide regional connectivity, improve safety, accommodate
1084 projected population and economic growth, and satisfy critical
1085 transportation requirements caused by increased traffic volume
1086 growth and travel demands.

1087 (b) Acquisition of the lands described in this section is
1088 also required to protect the surface water and groundwater
1089 resources of Lake, Orange, and Seminole counties, otherwise
1090 known as the Wekiva Study Area, including recharge within the
1091 springshed that provides for the Wekiva River system. Protection
1092 of this area is crucial to the long term viability of the Wekiva
1093 River and springs and the central Florida region's water supply.
1094 Acquisition of the lands described in this section is also
1095 necessary to alleviate pressure from growth and development
1096 affecting the surface and groundwater resources within the
1097 recharge area.

1098 (c) Lands acquired pursuant to this section that are needed
1099 for transportation facilities for the Wekiva Parkway shall be
1100 determined not necessary for conservation purposes pursuant to
1101 ss. 253.034(6) and 373.089(5) and shall be transferred to or
1102 retained by the Central Florida ~~Orlando-Orange County~~ Expressway

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1103 Authority or the Department of Transportation upon reimbursement
1104 of the full purchase price and acquisition costs.

1105 (7) The Department of Transportation, the Department of
1106 Environmental Protection, the St. Johns River Water Management
1107 District, Central Florida ~~Orlando-Orange County~~ Expressway
1108 Authority, and other land acquisition entities shall cooperate
1109 and establish funding responsibilities and partnerships by
1110 agreement to the extent funds are available to the various
1111 entities. Properties acquired with Florida Forever funds shall
1112 be in accordance with s. 259.041 or chapter 373. The Central
1113 Florida ~~Orlando-Orange County~~ Expressway Authority shall acquire
1114 land in accordance with this section of law to the extent funds
1115 are available from the various funding partners, but shall not
1116 be required nor assumed to fund the land acquisition beyond the
1117 agreement and funding provided by the various land acquisition
1118 entities.

1119 Section 19. Subsection (1) of section 369.324, Florida
1120 Statutes, is amended to read:

1121 369.324 Wekiva River Basin Commission.—

1122 (1) The Wekiva River Basin Commission is created to monitor
1123 and ensure the implementation of the recommendations of the
1124 Wekiva River Basin Coordinating Committee for the Wekiva Study
1125 Area. The East Central Florida Regional Planning Council shall
1126 provide staff support to the commission with funding assistance
1127 from the Department of Economic Opportunity. The commission
1128 shall be comprised of a total of 18 ~~19~~ members appointed by the
1129 Governor, 9 of whom shall be voting members and 9 ~~10~~ shall be ad
1130 hoc nonvoting members. The voting members shall include:

1131 (a) One member of each of the Boards of County

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1132 Commissioners for Lake, Orange, and Seminole Counties.

1133 (b) One municipal elected official to serve as a
1134 representative of the municipalities located within the Wekiva
1135 Study Area of Lake County.

1136 (c) One municipal elected official to serve as a
1137 representative of the municipalities located within the Wekiva
1138 Study Area of Orange County.

1139 (d) One municipal elected official to serve as a
1140 representative of the municipalities located within the Wekiva
1141 Study Area of Seminole County.

1142 (e) One citizen representing an environmental or
1143 conservation organization, one citizen representing a local
1144 property owner, a land developer, or an agricultural entity, and
1145 one at-large citizen who shall serve as chair of the council.

1146 (f) The ad hoc nonvoting members shall include one
1147 representative from each of the following entities:

- 1148 1. St. Johns River Management District.
- 1149 2. Department of Economic Opportunity.
- 1150 3. Department of Environmental Protection.
- 1151 4. Department of Health.
- 1152 5. Department of Agriculture and Consumer Services.
- 1153 6. Fish and Wildlife Conservation Commission.
- 1154 7. Department of Transportation.
- 1155 8. MetroPlan Orlando.
- 1156 9. Central Florida ~~Orlando-Orange County~~ Expressway
1157 Authority.
- 1158 10. ~~Seminole County Expressway Authority.~~

1159 Section 20. (1) Effective upon the completion of
1160 construction of the Poinciana Parkway, a limited access facility

596-00985-14

2014230c1

1161 of approximately 9 miles in length in Osceola County with its
1162 northwestern terminus at the intersection of County Road 54 and
1163 US 17/US 92 and its southeastern terminus at the current
1164 intersection of Rhododendron and Cypress Parkway, described in
1165 the Osceola County Expressway Authority May 8, 2012, Master
1166 Plan, all powers, governance, and control of the Osceola County
1167 Expressway System, created pursuant to part V, chapter 348,
1168 Florida Statutes, is transferred to the Central Florida
1169 Expressway Authority, and the assets, liabilities, facilities,
1170 tangible and intangible property and any rights in the property,
1171 and any other legal rights of the Osceola County Expressway
1172 Authority are transferred to the Central Florida Expressway
1173 Authority. The effective date of such transfer shall be extended
1174 until completion of construction of such portions of the
1175 Southport Connector Expressway, the Northeast Connector
1176 Expressway, such portions of the Poinciana Parkway to connect to
1177 State Road 429, and the Osceola Parkway Extension, as each is
1178 described in the Osceola County Expressway Authority May 8,
1179 2012, Master Plan, which are included in any design contract
1180 executed by the Osceola County Expressway Authority before July
1181 1, 2020. Part V of chapter 348, Florida Statutes, consisting of
1182 ss. 348.9950-348.9961, is repealed on the same date that the
1183 Osceola County Expressway System is transferred to the Central
1184 Florida Expressway Authority.

1185 (2) The Central Florida Expressway Authority shall also
1186 reimburse any and all obligations of any other governmental
1187 entities with respect to the Osceola County Expressway System,
1188 including any obligations of Osceola County with respect to
1189 operations and maintenance of the Osceola County Expressway

596-00985-14

2014230c1

1190 System and any loan repayment obligations, including repayment
1191 obligations with respect to State Infrastructure Bank loans.
1192 Such reimbursement shall be made from revenues available for
1193 such purpose after payment of all amounts required:

1194 (a) Otherwise by law;

1195 (b) By the terms of any resolution authorizing the issuance
1196 of bonds by the authority, the Orlando-Orange County Expressway
1197 Authority, or the Osceola County Expressway Authority;

1198 (c) By the terms of any resolution under which bonds are
1199 issued by Osceola County for the purpose of constructing
1200 improvements to the Osceola County Expressway System; and

1201 (d) By the terms of the memorandum of understanding between
1202 the Orlando-Orange County Expressway Authority and the
1203 department as ratified by the board of the Orlando-Orange County
1204 Expressway Authority on February 22, 2012.

1205 Section 21. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

214114

Meeting Date

Topic Expressway Authority

Bill Number CS/SB 230 (if applicable)

Name Kathy Russell

Amendment Barcode (if applicable)

Job Title Dir of Gov Relations

Address 400 S Orange Ave

Phone 407 383 2075

Street

Orlando

FL

City

State

Zip

E-mail

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

Representing City of Orlando

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.

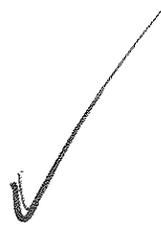
This form is part of the public record for this meeting.



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs



Subject: Committee Agenda Request

Date: January 10, 2014

I respectfully request that **Senate Bill 230**, relating to the Orlando-Orange County Expressway Authority, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 10

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 236

INTRODUCER: Education Committee and Senator Richter

SUBJECT: Renaming of Florida College System Institutions

DATE: February 4, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Graf</u>	<u>Klebacha</u>	<u>ED</u>	Fav/CS
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 236 codifies the names of Florida SouthWestern State College and Pasco-Hernando State College.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

A Florida College System (FCS) institution is authorized to change the institution's name, with the approval of that FCS institution's district board of trustees, and use the designation "college" or "state college" if the institution:¹

- Is authorized to grant baccalaureate degrees in accordance with current law,² and
- Is accredited as a baccalaureate-degree-granting institution by the Commission on Colleges of the Southern Association of Colleges and Schools (SACS).

¹ Section 1001.60(2)(b)1., F.S. The 2008 Legislature provided FCS institutions the authority to use the designation "college." Chapter 2008-52, s. 2, Laws of Fla. In 2009, FCS institutions were also authorized to use the designation "state college." Chapter 2009-228, s. 3, Laws of Fla.

² Section 1007.33, F.S.

A FCS institution's district board of trustees that approves a change to the institution's name must seek statutory codification of such name change in law³ during the next regular legislative session.⁴

Currently, 15 of the 28 FCS institutions use the designation "state college":

1. Daytona State College
2. Eastern Florida State College
3. Edison State College
4. Florida State College at Jacksonville
5. Gulf Coast State College
6. Indian River State College
7. Lake-Sumter State College
8. Northwest Florida State College
9. Palm Beach State College
10. Pensacola State College
11. Polk State College
12. Seminole State College of Florida
13. South Florida State College
14. St. Johns River State College
15. State College of Florida, Manatee-Sarasota

Edison State College

Edison State College is one of 28 FCS institutions, and serves Charlotte, Collier, Glades, Hendry, and Lee Counties.⁵ Edison State College was first established as Edison Junior College in 1962. In 1972, Edison Junior College formally became Edison Community College.⁶ In 2004, Edison Community College changed to Edison College⁷ which became Edison State College in 2009.⁸

The Florida Department of Education (DOE) reported that at least two higher education institutions, which are not related to Edison State College, use the name "Edison" as part of their name:⁹

³ Section 1000.21(3), F.S.

⁴ Section 1001.60(2)(c), F.S.

⁵ Section 1000.21(3), F.S.; see also Florida Department of Education, *Community College Campuses*, <http://data.fldoe.org/workforce/contacts/default.cfm?action=showList&ListID=11> (last visited Jan. 23, 2014).

⁶ Edison State College, *History of Edison State College*, <http://www.edison.edu/about/historyofedison> (last visited Jan. 23, 2014).

⁷ Chapter 2004-271, s. 3, Laws of Fla.

⁸ Chapter 2009-228, s. 2, Laws of Fla.

⁹ Florida Department of Education, *2014 Agency Legislative Bill Analysis for SB 236* (Dec. 26, 2013), at 2.

- Edison Community College located in Ohio,¹⁰ and
- Thomas Edison State College located in New Jersey.¹¹

DOE reported that both Edison Community College and Thomas Edison State College, which were founded in the 1970s, may have superior legal rights to use the name "Edison" in certain areas of the United States. According to DOE, to the extent that Edison State College advertises or promotes its educational services or provides educational services through a distance learning program in other states, Edison State College runs a risk of violating the trademark rights of the other institutions that use the name "Edison" as part of their name. In addition, Thomas Edison State College owns a federal registration for the trademark THOMAS EDISON STATE COLLEGE, which was granted prior to 2008. Edison State College faces substantial limits in using the mark EDISON STATE COLLEGE because the district board of trustees for Edison State College did not approve the name Edison State College until 2008.¹²

Edison State College meets the criteria, required under current law, for approval of the name change:

- On April 19, 2005, Edison College (currently named Edison State College) received approval from the State Board of Education (SBE) to grant a Bachelor of Applied Science degree in Public Safety Management.¹³
- On December 10, 2007, Edison College received from SACS, accreditation as a baccalaureate-degree-granting institution.¹⁴
- On September 24, 2013, Edison State College's district board of trustees approved a name change.¹⁵

Pasco-Hernando Community College

Established in 1967,¹⁶ Pasco-Hernando Community College is also a FCS institution, serving Hernando and Pasco Counties.¹⁷

Pasco-Hernando Community College also meets the criteria, required under current law, for approval of the name change:

¹⁰ Edison Community College, *About Us*, <http://www.edisonohio.edu/index.php?page=about-us> (last visited Jan. 23, 2014).

¹¹ Thomas Edison State College, *About Thomas Edison State College*, <http://www.tesc.edu/academics/catalog/About-Thomas-Edison-State-College.cfm> (last visited Jan. 23, 2014).

¹² Edison State College, *Minutes – August 18, 2008*, at 1, available at <http://www.edison.edu/viewdoc.php?id=7401> (last visited Jan. 23, 2014); DOE Analysis, *supra* note 9, at 2-3.

¹³ State Board of Education, *Minutes of Meeting held April 19, 2005*, available at http://www.fldoe.org/board/meetings/2005_05_17/Minutes_2005_04_19.pdf, at 3 of 4; DOE Analysis, *supra* note 9, at 2.

¹⁴ Commission on Colleges, *2007-2008 Annual Report and Proceedings*, available at <http://www.sacscoc.org/pdf/Annual%20Reports/AnnualReport2007-2008.pdf>, at 40 of 92; DOE Analysis, *supra* note 11.

¹⁵ The name approved was from Edison State College to "Florida Southwestern State College." Edison State College, *District Board of Trustees Meeting Minutes*, Sep. 24, 2013, available at <http://www.edison.edu/viewdoc.php?id=294383>, at 3.

¹⁶ Pasco-Hernando Community College, *History of the College*, <http://www.phcc.edu/discover-phcc/history-college> (last visited Jan. 23, 2014).

¹⁷ Section 1000.21(3)(s), F.S.

- On June 18, 2013, Pasco-Hernando Community College received approval from the SBE to grant a Bachelor of Applied Science in Supervision and Management and a Bachelor of Science in Nursing.¹⁸
- On December 9, 2013, Pasco-Hernando Community College received from SACS, accreditation as a baccalaureate-degree-granting institution.¹⁹
- On April 16, 2013, Pasco-Hernando Community College's district board of trustees approved the name change from Pasco-Hernando Community College to Pasco-Hernando State College.

III. Effect of Proposed Changes:

The bill codifies the names of Florida SouthWestern State College and Pasco-Hernando State College.

As a result of the name change from Edison State College to Florida SouthWestern State College, Florida SouthWestern State College, could avoid potential challenges from other institutions, regarding using the name "Edison" as part of its name.

The bill provides an effective date of July 1, 2014.

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.

¹⁸ State Board of Education, *Approval of Minutes of May 21, June 18, July 16, and August 2, 2013*, available at http://www.fldoe.org/board/meetings/2013_09_17/minutes.pdf, at 14 of 19.

¹⁹ Southern Association of Colleges and Schools Commission on Colleges, *Actions Taken by the SACSCOC Board of Trustees* (Dec. 9, 2013), available at <http://www.sacscoc.org/2013decemberActionsandDisclosureStatements/13cractdecember.pdf>, at 3 of 7.

C. Government Sector Impact:

Florida SouthWestern State College may incur costs related to the name change from Edison State College. Such costs may be associated with signage, publications, documentation, and other related items.²⁰ Payment of such costs, if any, shall be the responsibility of the Florida SouthWestern State College.

Edison State College estimates that the college will incur \$300,000 to implement the name change from Edison State College to Florida SouthWestern State College. No tax dollars will be used.²¹

Pasco-Hernando State College may also incur costs related to the name change from Pasco-Hernando Community College. Payment of such costs, if any, shall be the responsibility of the Pasco-Hernando State College.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1000.21.

IX. Additional Information:

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

CS by Education on January 14, 2014:

Adds a provision to codify the name of Pasco-Hernando State College.

- B. **Amendments:**

None.

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

²⁰ Florida Department of Education, *2014 Agency Legislative Bill Analysis for SB 236* (Dec. 26, 2013), at 4.

²¹ *Id.*

By the Committee on Education; and Senator Richter

581-01073-14

2014236c1

1 A bill to be entitled

2 An act relating to the renaming of Florida College
3 System institutions; amending s. 1000.21, F.S.;
4 renaming Edison State College and Pasco-Hernando
5 Community College as "Florida SouthWestern State
6 College" and "Pasco-Hernando State College,"
7 respectively; providing an effective date.
8

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

11 Section 1. Paragraphs (f) and (s) of subsection (3) of
12 section 1000.21, Florida Statutes, are amended to read:

13 1000.21 Systemwide definitions.—As used in the Florida K-20
14 Education Code:

15 (3) "Florida College System institution" except as
16 otherwise specifically provided, includes all of the following
17 public postsecondary educational institutions in the Florida
18 College System and any branch campuses, centers, or other
19 affiliates of the institution:

20 (f) Florida SouthWestern ~~Edison~~ State College, which serves
21 Charlotte, Collier, Glades, Hendry, and Lee Counties.

22 (s) Pasco-Hernando State ~~Community~~ College, which serves
23 Hernando and Pasco Counties.

24 Section 2. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-4-14

Meeting Date

Topic _____

Bill Number CS/SB 236
(if applicable)

Name Elizabeth Blomme

Amendment Barcode _____
(if applicable)

Job Title _____

Address 10230 Ridge Rd
Street

Phone 227-816-3400

New Port Richey FL 34654
City State Zip

E-mail _____

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

04 Feb 2014

Meeting Date

Topic State College Name Change

Bill Number 236
(if applicable)

Name Matthew Holliday

Amendment Barcode _____
(if applicable)

Job Title Director, Governmental Relations

Address 8099 College Parkway
Street

Phone 239-826-7868

FL Myers FL 33914
City State Zip

E-mail mholliday@edison.edu

Speaking: For Against Information

Representing Edison State College

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-4-14

Meeting Date

Topic _____

Bill Number CS/SB 236
(if applicable)

Name Judy PARKER

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE, PHSC

Address 5517 DRINKARD DR.

Phone 727-816-3400

Street

New PORT RICHEY

City

FL

State

34653

Zip

E-mail _____

Speaking: For Against Information

Representing PASCO HERNANDO STATE COLLEGE

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)

2-4-14

Meeting Date

Topic _____

Bill Number CS/SB 236
(if applicable)

Name Edward C Blommel

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE PHSC

Phone 727-816-3400
727-919-3061

Address 10230 RIDGE RD.
Street

E-mail edblommel@gmail.com

New Port Richey, FL 34654
City State Zip

Speaking: For Against Information

Representing PASCO HERNANDO STATE COLLEGE

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-4-14

Meeting Date

Topic ~~CS/SB 236~~ Bill Number CS/SB 236
(if applicable)

Name STEVE SCHROEDER Amendment Barcode _____
(if applicable)

Job Title General Counsel/EXEC, DIR. Government relations

Address 10230 Ridge Rd, Phone 227-207-0313
Street

New Port Richey FL 34654 E-mail Schroes@Phsc.edu
City State Zip

Speaking: For Against Information

Representing PASCO - Hernando State College

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-2-14
Meeting Date

Topic _____

Bill Number CS/SB 236
(if applicable)

Name Katherine M. Johnson

Amendment Barcode _____
(if applicable)

Job Title President

Address 10230 Ridge Road
Street

Phone 727-919-3061

New Port Richey FL 34654
City State Zip

E-mail JOHNSONK@PHSC.EDU

Speaking: For Against Information

Representing PASCO-HERNAND STATE COLLEGE

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.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Gaming, *Chair*
Appropriations
Appropriations Subcommittee on
Education
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR GARRETT RICHTER

President Pro Tempore

23rd District

January 31, 2014

The Honorable Wilton Simpson, Chair
Committee on Community Affairs
315 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Simpson:

Senate Bill 236, relating to renaming Edison State College as "Florida SouthWestern State College", is scheduled to be heard in the Committee on Community Affairs this upcoming Tuesday, February 4. Due to conflicts in my committee schedule, I will be sending my Legislative Assistant, Michael Nachev as a representative to present the bill for your committee's consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Tom Yeatman, Staff Director
Ann Whittaker, Administrative Assistant

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road N. Unit 42 B, Lehigh Acres, FL 33916 (239) 338-2777

Senate's Website: 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 Community Affairs

BILL: CS/SB 262

INTRODUCER: Community Affairs Committee and Senator Abruzzo

SUBJECT: Motorist Safety

DATE: February 4, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Everette</u>	<u>Eichin</u>	<u>TR</u>	Favorable
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 262 authorizes, but does not require, the governing board of a county to create a “yellow dot” critical motorist medical information program for the purpose of assisting emergency medical responders in the event of a motorist accident or a medical emergency. Participants in the program receive a yellow dot decal to place on their vehicle’s rear window, which alerts emergency services personnel to look for a corresponding yellow folder in the glove box. The yellow folder may include the injured participant’s emergency contact and medical information.

Under the bill, a person’s participation in the program is voluntary and free. Counties may solicit sponsorships to cover expenditures, including the cost of the yellow dot decals and folders. The bill also authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) and the Department of Transportation (DOT) to provide education and training to encourage emergency medical responders to participate in the program. DHSMV and DOT may also take reasonable measures to publicize the program.

The bill requires the governing body of a participating county to adopt guidelines and procedures to ensure that confidential information is not made public.

II. Present Situation:

The Yellow Dot Program is designed to help first responders provide life-saving medical attention to those injured in a vehicle crash or other medical emergency. During the first critical hours after an accident, an injured motorist may be unconscious or unable to speak. Through the

use of a decal, the Yellow Dot Program functions by alerting first responders to search for medical information in the glove box of the injured person's vehicle.¹

The Yellow Dot Program is a cooperative effort between law enforcement, fire, emergency and medical services and rescue to aid in communicating important health information about individuals involved in automobile crashes. Seniors comprise the largest participating group.

A yellow dot kit is provided to the participant, which contains a medical information card and a yellow dot decal. The decal is to be placed on the lower left rear window of the vehicle, alerting first responders arriving on the scene that a yellow folder in the glove box contains vital personal and medical information.

The program began in Connecticut in 2002. Now, with slight variations, it is offered by counties throughout at least nine other states: Kansas, Illinois, Iowa, Minnesota, Massachusetts, Virginia, Alabama, West Virginia and New York.²

III. Effect of Proposed Changes:

The bill authorizes, but does not require, the governing body of a county to create a yellow dot critical motorist medical information program for the purpose of assisting emergency medical responders and program participants in the event of a motor vehicle accident or a medical emergency involving a participant's vehicle.

Under the bill, a person's participation in the program is voluntary and free. A county, or group of counties, may solicit sponsorships from interested business entities and not-for-profit organizations to cover expenditures, including the cost of the yellow dot decals and folders that are provided free of charge to participants. Two or more counties also may enter into an interlocal agreement to solicit these sponsorships.

The bill also authorizes the Department of Highway Safety and Motor Vehicles and the Department of Transportation to provide education and training to encourage emergency medical responders to participate in the program. DHSMV and DOT may also take reasonable measures to publicize the program.

Any owner or lessee of a motor vehicle may participate in the program upon submission of an application. The application is created by the county and must include a statement that the information submitted will be disclosed only to authorized personnel of law enforcement and public safety agencies, emergency medical services agencies, and hospitals in the case of a motor vehicle accident or other emergency situation. The application must describe the confidential nature of the medical information voluntarily provided by the participant. The application must also require that the participant give express written consent for the use and disclosure of the yellow folder's contents to authorized personnel for the following purposes:

¹ Yellow Dot Program, *available at* www.yellow-dot.com (last visited Jan. 17, 2014).

² Larry Copeland, *Yellow Dot car Program speeds to help crash victims*, USA Today, May 24, 2011, *available at* http://usatoday30.usatoday.com/news/nation/2011-05-23-yellow-dot-seniors-drivers-baby-boomers_n.htm (last visited Dec. 11, 2013).

- to positively identify the participant;
- to ascertain whether the participant has a medical condition that might impede communications between the participant and the responder;
- to inform the participant's emergency contacts about the location, condition, or death of the participant;
- to learn the nature of any medical information reported by the participant; and
- to ensure that the participant's current medications and preexisting medical conditions are considered when emergency medical treatment is administered for any injury to or condition of the participant.

After submitting a completed application, the participant is given a yellow dot decal to affix onto the lower left corner of his or her vehicle's rear window (or a clearly visible location on a motorcycle), a yellow dot folder, and a form for the participant's information.

The form, which is to be placed inside the yellow folder, is to contain the following information:

- the participant's name;
- the participant's photograph;
- emergency contact information of no more than two persons;
- the participant's medical information, including medical conditions, recent surgeries, allergies and medications;
- the participant's hospital preference; and
- contact information for no more than two physicians.

When the driver of a vehicle with an affixed yellow dot decal is involved in an accident or emergency situation, an emergency medical responder at the scene is authorized to search the glove compartment of the vehicle for the corresponding yellow dot folder.

The governing body of a participating county is required to adopt guidelines and procedures for ensuring that any information that is confidential is not made public through the program.

The bill has an effective date of July 1, 2014.

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:

Public participation in the program is voluntary and free. One small corporation in Reno, Nevada (Yellow Dot LLC) advertises a booklet and sticker, priced at \$5.00.³

The governing board of the county or counties wishing to initiate a motorist medical information program can solicit funds through sponsorships from business entities and not-for-profit organizations. Businesses choosing to participate will do so voluntarily.

C. Government Sector Impact:

The bill does not require any county to create a Yellow Dot Program. If the governing body of a county decides to create such a program, the bill authorizes the county's governing body to seek sponsorships to cover costs. The cost of the program is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Community Affairs on February 4, 2014:**

Amends the bill to remove a liability abrogation provision for emergency medical responders or their employers.

B. Amendments:

None.

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

³ See, Yellow Dot LLC, How To Order, at <http://www.yellow-dot.com/3301.html>.



396226

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2014	.	
	.	
	.	
	.	

The Committee on Community Affairs (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 104 - 110

and insert:

(6) The governing body of a participating county shall

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

And the title is amended as follows:

Delete lines 17 - 18

and insert:



396226

11

medical responders; requiring



588410

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/04/2014	.	
	.	
	.	
	.	

The Committee on Community Affairs (Soto) recommended the following:

Senate Amendment

Delete lines 106 - 109
and insert:
responder disseminates any information from the yellow dot folder to any other emergency medical responder, hospital, or health care provider who renders emergency medical treatment to the participant or if the emergency medical responder fails to discover the yellow dot folder.

By Senator Abruzzo

25-00277-14

2014262__

1 A bill to be entitled
2 An act relating to motorist safety; authorizing the
3 governing body of a county to create a yellow dot
4 critical motorist medical information program for
5 certain purposes; authorizing a county to solicit
6 sponsorships and enter into an interlocal agreement
7 with another county to solicit such sponsorships for
8 the medical information program; authorizing the
9 Department of Highway Safety and Motor Vehicles and
10 the Department of Transportation to provide education
11 and training and publicize the program; requiring the
12 program to be free to participants; providing for
13 yellow dot program applications, decals, folders, and
14 participant information forms; providing procedures
15 for use of the decal, folder, and form; providing for
16 limited use of information on the forms by emergency
17 medical responders; limiting liability of emergency
18 medical responders in certain circumstances; requiring
19 the governing body of a participating county to adopt
20 guidelines and procedures to ensure that confidential
21 information is not made public; providing an effective
22 date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Yellow dot critical motorist medical information
27 program; yellow dot decal, folder, and information form.-

28 (1) The governing body of a county may create a yellow dot
29 critical motorist medical information program to facilitate the

25-00277-14

2014262__

30 provision of emergency medical care to program participants by
31 emergency medical responders by making critical medical
32 information readily available to responders in the event of a
33 motor vehicle accident or a medical emergency involving a
34 participant's vehicle.

35 (2) (a) The governing body of a county may solicit
36 sponsorships from business entities and not-for-profit
37 organizations to cover the costs of the program, including the
38 cost of decals and folders that must be provided free of charge
39 to participants. Two or more counties may enter into an
40 interlocal agreement to solicit such sponsorships.

41 (b) The Department of Highway Safety and Motor Vehicles or
42 the Department of Transportation may provide education and
43 training to encourage emergency medical responders to
44 participate in the program and may take reasonable measures to
45 publicize the program.

46 (3) Any owner or lessee of a motor vehicle may participate
47 in the program upon submission of an application and
48 documentation in the form and manner prescribed by the governing
49 body of the county.

50 (a) The application form must include a statement that the
51 information submitted will be disclosed only to authorized
52 personnel of law enforcement and public safety agencies,
53 emergency medical services agencies, and hospitals for the
54 purposes authorized in subsection (5).

55 (b) The application form must describe the confidential
56 nature of the medical information voluntarily provided by the
57 participant and must include a notice to the participant stating
58 that, by providing the medical information and signing the form,

25-00277-14

2014262__

59 he or she agrees to the disclosure of the medical information to
60 authorized personnel and their use of such information solely
61 for the purposes listed in subsection (5).

62 (c) The county may not charge a fee to participate in the
63 yellow dot program.

64 (4) A participant shall receive a yellow dot decal, a
65 yellow dot folder, and a form containing the personal and
66 medical information provided by the participant.

67 (a) The participant shall affix the decal onto the rear
68 window in the left lower corner of a motor vehicle or in a
69 clearly visible location on a motorcycle.

70 (b) A person who rides in a motor vehicle as a passenger
71 may also participate in the program but may not be issued a
72 decal if a decal has been issued to the owner or lessee of the
73 motor vehicle in which the person rides.

74 (c) The yellow dot folder, which shall be stored in the
75 glove compartment of the motor vehicle or in a compartment
76 attached to a motorcycle, shall contain a form with the
77 following information about the participant:

78 1. The participant's name.

79 2. The participant's photograph.

80 3. Emergency contact information for no more than two
81 persons.

82 4. The participant's medical information, including medical
83 conditions, recent surgeries, allergies, and current
84 medications.

85 5. The participant's hospital preference.

86 6. Contact information for no more than two physicians.

87 (5) (a) If the driver or a passenger of a motor vehicle is

25-00277-14

2014262__

88 involved in a motor vehicle accident or emergency situation and
89 a yellow dot decal is affixed to the vehicle, an emergency
90 medical responder at the scene may search the glove compartment
91 of the vehicle for the corresponding yellow dot folder.

92 (b) The use of the information contained in the yellow dot
93 folder by an emergency medical responder at the scene is limited
94 to the following purposes:

95 1. To positively identify the participant.

96 2. To ascertain whether the participant has a medical
97 condition that might impede communications between the
98 participant and the responder.

99 3. To access the medical information form.

100 4. To ensure that the participant's current medications and
101 preexisting medical conditions are considered when emergency
102 medical treatment is administered for any injury to or condition
103 of the participant.

104 (6) Except for wanton or willful conduct, an emergency
105 medical responder or his or her employer is not liable if a
106 responder disseminates or fails to disseminate any information
107 from the yellow dot folder to any other emergency medical
108 responder, hospital, or health care provider who renders
109 emergency medical treatment to the participant.

110 (7) The governing body of a participating county shall
111 adopt guidelines and procedures to prevent the public disclosure
112 of confidential information through the program.

113 Section 2. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic

MOTORIST Safety

Bill Number

SB 262

(if applicable)

Name

FRED Angelo

Amendment Barcode

(if applicable)

Job Title

Leg. VP Palm Bch Co. Firefighters

Address

2328 S. Congress Ave #200

Phone

Street

WPB

FL

33406

E-mail

City

State

Zip

Speaking:

For

Against

Information

Representing

Pro

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.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Vice Chair*
Environmental Preservation and
Conservation, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Finance and Tax
Communications, Energy, and Public Utilities
Military Affairs, Space, and Domestic Security

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO

25th District

January 13th, 2014

The Honorable Wilton Simpson
322 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Simpson:

I respectfully request that Senate Bill 262, related to motorist safety and the yellow dot program, be placed on the Community Affairs Committee agenda.

Thank you for your consideration. Please let me know if I can provide any further information.

Sincerely,

A handwritten signature in cursive script that reads "Joseph Abruzzo".

Joseph Abruzzo

cc: Tom Yeatman, Staff Director

REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: 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 Community Affairs

BILL: SB 482

INTRODUCER: Senator Hays

SUBJECT: Florida Hurricane Catastrophe Fund

DATE: January 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	Favorable
2.			BI	
3.			AP	

I. Summary:

SB 482 reduces the Florida Hurricane Catastrophe Fund (Cat Fund) coverage limits and allows insurers to recoup through their property insurance premiums specified reinsurance premiums paid by insurers to the Cat Fund. The bill is designed to reduce the overall financial obligations of the fund, reducing the likelihood and amount of bonding and emergency assessments needed to fund deficits in the event the fund experiences a shortfall after a major hurricane.

The bill amends s. 215.555(4)(c)1, F.S., to phase in decreases of \$1 billion per year to the \$17 billion Cat Fund mandatory coverage limit beginning in the 2015-2016 contract year until the 2017-2018 contract year, when the limit will have been reduced to \$14 billion. Thereafter, the bill provides a mechanism for the board to determine if the claims-paying capacity of the fund will exceed \$14 billion.

The bill also amends s. 627.062(5), F.S., to allow insurers to recoup reinsurance premiums paid to the Cat Fund and purchased solely to cover a potential gap between the maximum statutory obligation of the fund as specified in s. 215.555(4)(c) and the fund's claims-paying capacity estimate. The bill also deletes a prohibition against insurers recouping reinsurance costs that duplicate coverage provided by the Cat Fund.

II. Present Situation:

The Florida Hurricane Catastrophe Fund (Cat Fund)

The Cat Fund is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. The Cat Fund is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention (deductible). The Cat Fund provides insurers an additional source of reinsurance that is

significantly less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the Cat Fund, the fund acts to lower residential property insurance premiums for consumers. The Cat Fund must charge insurers the actuarially indicated premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

Cat Fund Mandatory Coverage

All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the Cat Fund. The Cat Fund is authorized by statute to sell \$17 billion of mandatory layer coverage. Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. For example, if an insurer paid 10 percent of the total premium paid in a contract-year, then that insurer would be eligible to receive up to 10 percent of the mandatory layer of coverage (\$1.7 billion of the \$17 billion mandatory layer).

Insurers that experience multiple hurricanes causing losses during the contract year may receive reimbursement from the Cat Fund for losses that exceed the applicable retention. The insurer's full retention is applied to each hurricane causing the two largest losses for that insurer. For each other covered event resulting in losses, the insurer's retention is only one-third of the full retention. To access the Cat Fund an insurer must have incurred losses above the retention levels calculated and set by statute. When faced with a multi-storm season, insurers must reach their full retention levels on the two largest storms of the season. The retention level is then reduced to one-third the normal amount for any other storms that season. Citizens Property Insurance Corporation is the largest purchaser of Cat Fund coverage.

Cat Fund Premiums

The Cat Fund must charge insurers the "actuarially indicated" premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. The "actuarially indicated" premium is an amount that is adequate to pay current and future obligations and expenses of the fund. In practice, each insurer pays the Cat Fund annual reimbursement premiums that are proportionate to each insurer's share of the Cat Fund's risk exposure. The cost of Cat Fund coverage is significantly lower than the cost of private reinsurance due to the fact that the fund is a tax-exempt non-profit corporation and does not charge a "risk load."

Cat Fund Claims-Paying Resources

The Cat Fund cash balance at year-end 2013 is estimated to be \$9.764 billion.¹ The proceeds from the 2013 \$2 billion pre-event bond issue provide additional liquidity.² Obligations exceeding the cash balance of the Cat Fund would require bonding of up to \$5.236 billion.³ The assessment base for the Cat Fund is approximately \$36.185 billion for premiums written at year end 2012,⁴ enabling the Cat Fund to levy annual assessments of as much as \$2.171 billion for one contract year and \$3.619 billion for multiple contract years.⁵

Cat Fund Bonding and Assessment Authority

Reimbursements to insurers for losses above the current cash balance of the fund are financed through bonding. When the cash balance of the Cat Fund is insufficient to cover losses, the law authorizes the Cat Fund to issue revenue bonds, which are funded by emergency assessments on property and casualty policyholders. If a large storm triggered the full capacity of the Cat Fund, this season bond issues totaling over \$5 billion could be necessary for the fund to meet its maximum obligations.

Bonds would be funded by an emergency assessment of up to 6 percent of premium on most lines of property and casualty insurance for funding losses from a single year, and up to 10 percent of premium for funding losses from multiple years. All lines of property and casualty insurance, including surplus lines insurance, are subject to emergency assessment except for workers' compensation and medical malpractice liability insurance. The Cat Fund's broad-based assessment authority is one of the reasons the Cat Fund was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.

Cat Fund Claims-Paying Capacity Estimates

In May and October of each contract year, the SBA is required to publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity, the fund's estimated claims-paying capacity, and the projected balance of the fund as of December 31, 2013⁶ After the end of each calendar year, the board is required to notify insurers of the estimated borrowing capacity, estimated claims-paying capacity, and the balance of the fund as of December 31 to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss reimbursement purposes.

The October 15, 2013, Claims-Paying Capacity Estimate (Estimate) is the most recent such report to be issued.⁷ The report, prepared by Raymond James, evaluated the Cat Fund's bonding

¹ State Board of Administration, Florida Hurricane Catastrophe Fund, *FHCF Claims-Paying Capacity Estimates*, 2 (October 15, 2013), available at <http://www.sbafla.com/fhcf/LinkClick.aspx?fileticket=gFTzX41QxpA%3d&tabid=1412&mid=4266> (last visited Jan. 14, 2014).

² *Id.*

³ *Id.*

⁴ *Id.* at 4.

⁵ *Id.*

⁶ Section 215.555(4)(c)(2), F.S.

⁷ The first Claims Paying Capacity Estimate for the 2014-2015 hurricane season is due to be published in May 2014.

capacity by analyzing the current financial markets and obtaining written feedback from a senior managing underwriter from four large financial services firms (Barclay's, Citi, Goldman Sachs, and J.P. Morgan).

Bonding capacity (the estimated dollar amount of bonds that could be successfully issued) for a 12-month period is estimated to be \$6.1 billion, with an additional \$5.7 billion of capacity estimated for months 13-24.⁸ These amounts are in excess of the maximum amount of bonding that could have been needed for the 2013-2014 contract year. Claims-paying resources for the 2014-2015 contract year will include these amounts plus additional reimbursement premium revenues of approximately \$1.3 billion.⁹

III. Effect of Proposed Changes:

Section 1 amends s. 215.555(4)(c)1, F.S., by reducing the Florida Hurricane Catastrophe Fund coverage limits. The bill phases in annual decreases of the \$17 billion Cat Fund mandatory coverage limit beginning in the 2015-2016 contract year as follows:

- For the 2015-2016 contract year, \$16 billion;
- For the 2016-2017 contract year, \$15 billion;
- For the 2017-2018 contract year, \$14 billion; and
- For the contract years after the 2017-2018 contract year, \$14 billion. However if the board determines the estimated claims-paying capacity of the fund will exceed \$14 billion for the current contract year and an additional \$14 billion for the following year, the claims-paying capacity for the current year is to be determined by adding to the \$14 billion one-half of the fund's estimated claims-paying capacity in excess of \$28 billion for the current year and the subsequent year.

Section 2 amends s. 627.062(5), F.S., to allow insurers to recoup reinsurance premiums paid to the Cat Fund and purchased solely to cover a potential gap between the maximum statutory obligation of the fund as specified in s. 215.555(4)(c) and the fund's claims-paying capacity estimate. The bill also deletes a prohibition against insurers recouping reinsurance costs that duplicate coverage provided by the Cat Fund.

Section 3 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁸ *Claims-Paying Capacity Estimates* at 11.

⁹ The precise amount of reimbursement premium will not be determined until after the FHCF premium formula is adopted by the SBA Trustees under s. 215.555(5), F.S., and 2014 exposure reports are received from insurers.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the analysis performed by the staff of the Florida Hurricane Catastrophe Fund (FHCF), by lowering coverage limits, the bill will reduce the fund's potential reliance on bonding backed by assessments, which will, among other things, reduce the fund's potential impact on non-residential-property policyholders. This action will also reduce the impact of volatile bond market conditions on the ability of the FHCF to fully fund its maximum obligation, thereby providing additional stability in the insurance marketplace. In addition, the reduction in the limit will improve the FHCF's ability to provide coverage for subsequent storm seasons after a major event.

The bill will reduce the coverage provided by the fund, and the premiums collected by the fund will be reduced to reflect the reduction in coverage limits. It is presumed that most insurers will procure additional reinsurance to offset the reduction in FHCF limits, and that private insurers will seek to recoup their additional reinsurance costs in the premiums they charge consumers, but not necessarily Citizens Property Insurance Corporation. Citizens is not required to purchase reinsurance that guarantees the corporation's ability to pay all claims stemming from a 1 in 100 year probable maximum loss storm, a benchmark that most private market insurers meet in their reinsurance programs. Representatives of some insurers and consumer advocates have asserted that reductions in Cat Fund size resulting in private market premium increases may hinder the depopulation of Citizens by increasing the disparity between rates charged by Citizens and private market insurers. However, property catastrophe reinsurance pricing for Florida risks has declined significantly in the last several years, and current reports indicate that this trend is expected to continue with respect to the 2014 hurricane season.

Representatives of some business groups have voiced support in the past for reducing the Cat Fund's capacity because this change will reduce the likelihood that the Cat Fund will be required to levy assessments on all property and casualty lines of business (except workers' compensation and medical malpractice liability insurance). Many of these business groups view these assessments as a "tax" on other lines of insurance (such as motor vehicle insurance) that subsidizes the residential property insurance market.

C. Government Sector Impact:

The bill reduces the assessment liability of the Cat Fund, which decreases the probability that the fund will be required to issue bonds to meet its financial obligations. Supporters of similar legislation in the past noted that the Cat Fund is not the only insurance-related

state entity granted assessment authority. Citizens and the Florida Insurance Guaranty Association (FIGA) each have statutory authority to issue bond debt to meet obligations incurred in the event a major hurricane exhausts the financial resources of each entity. Reducing the likelihood of Cat Fund bonding and assessments will assist Citizens and FIGA in being able to raise funds from bond issues because Cat Fund bonds will be less likely to be in competition for investors in the event of a storm.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.555, 627.062.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Hays

11-00682-14

2014482__

1 A bill to be entitled
 2 An act relating to the Florida Hurricane Catastrophe
 3 Fund; amending s. 215.555, F.S.; providing and phasing
 4 in a reduction in the fund's coverage limits for
 5 reimbursement contracts; amending s. 627.062, F.S.;
 6 authorizing an insurer to recoup certain reinsurance
 7 payments paid to cover a potential gap in the fund's
 8 claims-paying capacity; deleting a provision
 9 prohibiting the recoupment of certain other
 10 reinsurance costs; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Paragraph (c) of subsection (4) of section
 15 215.555, Florida Statutes, is amended to read:

16 215.555 Florida Hurricane Catastrophe Fund.—

17 (4) REIMBURSEMENT CONTRACTS.—

18 (c)1. The contract must ~~shall~~ also provide that the
 19 obligation of the board with respect to all contracts covering a
 20 particular contract year ~~shall~~ not exceed the actual claims-
 21 paying capacity of the fund up to the following fund limit:

22 a. For the 2014-2015 contract year, \$17 billion.

23 b. For the 2015-2016 contract year, \$16 billion.

24 c. For the 2016-2017 contract year, \$15 billion.

25 d. For the 2017-2018 contract year, \$14 billion.

26 e. For contract years after the 2017-2018 contract year,
 27 \$14 billion. However, if a limit of \$17 billion for that
 28 ~~contract year, unless~~ the board determines that there is
 29 sufficient estimated claims-paying capacity to provide \$14 ~~\$17~~

11-00682-14

2014482__

30 billion of capacity for the current contract year and an
31 additional \$14 ~~\$17~~ billion of capacity for subsequent contract
32 years. ~~If the board makes such a determination,~~ the estimated
33 claims-paying capacity for the particular contract year shall be
34 determined by adding to the \$14 ~~\$17~~ billion limit one-half of
35 the fund's estimated claims-paying capacity in excess of \$28 ~~\$34~~
36 billion. However, the dollar growth in the limit may not
37 increase in any year by an amount greater than the dollar growth
38 of the balance of the fund as of December 31, ~~less any premiums~~
39 ~~or interest attributable to optional coverage,~~ as defined by
40 rule, which occurred over the prior calendar year.

41 2. In May and October of the contract year, the board shall
42 publish in the Florida Administrative Register a statement of
43 the fund's estimated borrowing capacity, the fund's estimated
44 claims-paying capacity, and the projected balance of the fund as
45 of December 31. After the end of each calendar year, the board
46 shall notify insurers of the estimated borrowing capacity,
47 estimated claims-paying capacity, and the balance of the fund as
48 of December 31 to provide insurers with data necessary to assist
49 them in determining their retention and projected payout from
50 the fund for loss reimbursement purposes. In conjunction with
51 the development of the premium formula, as provided ~~for~~ in
52 subsection (5), the board shall publish factors or multiples
53 that assist insurers in determining their retention and
54 projected payout for the next contract year. For all regulatory
55 and reinsurance purposes, an insurer may calculate its projected
56 payout from the fund as its share of the total fund premium for
57 the current contract year multiplied by the sum of the projected
58 balance of the fund as of December 31 and the estimated

11-00682-14

2014482__

59 borrowing capacity for that contract year as reported under this
60 subparagraph.

61 Section 2. Subsection (5) of section 627.062, Florida
62 Statutes, is amended to read:

63 627.062 Rate standards.—

64 (5) With respect to a rate filing involving coverage of the
65 type for which the insurer is required to pay a reimbursement
66 premium to the Florida Hurricane Catastrophe Fund, the insurer
67 may fully recoup in its property insurance premiums any
68 reimbursement premiums paid to the fund, together with
69 reasonable costs of other reinsurance, including reinsurance
70 purchased solely to cover a potential gap between the maximum
71 statutory obligation of the fund as specified in s.
72 215.555(4)(c) and the fund's claims-paying capacity estimate as
73 published in the Florida Administrative Register in May and
74 October of the prior contract year; ~~however, except as otherwise~~
75 ~~provided in this section, the insurer may not recoup reinsurance~~
76 ~~costs that duplicate coverage provided by the fund.~~ An insurer
77 may not recoup more than 1 year of reimbursement premium at a
78 time. Any under-recoupment from the prior year may be added to
79 the following year's reimbursement premium, and any over-
80 recoupment must be subtracted from the following year's
81 reimbursement premium.

82 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1.4.14
Meeting Date

Topic CAT FUND

Bill Number SB 482
(if applicable)

Name DAVID HART

Amendment Barcode _____
(if applicable)

Job Title EXEC VP

Address 136 S BRONOUGH ST

Phone 850.521.1200

Street

TALLAHASSEE, FL 32301

City

State

Zip

E-mail dhart@flchamber.com

Speaking: For Against Information

Representing FL CHAMBER

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)

2/4

Meeting Date

Topic REINSURANCE - FHCF

Bill Number SB 482 (if applicable)

Name DENNIS C. BURKE

Amendment Barcode (if applicable)

Job Title VICE PRESIDENT, REINSURANCE ASS'N OF AMERICA

Address 1445 NEW YORK AVE NW, WASH, DC

Phone 202-285-4330

Street

WASHINGTON

DC

20005

City

State

Zip

E-mail burke@reinsurance.org

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

Representing REINS. ASSOC OF AMERICA

Appearing at request of Chair: [] Yes [X] 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.

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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)

02/04/2014
Meeting Date

Topic CAT FUND

Bill Number SB 0482
~~0428~~
(if applicable)

Name DON BROWN

Amendment Barcode _____
(if applicable)

Job Title _____

Address POB 866
Street

Phone 850-865-9280

DPS, FL 32435
City State Zip

E-mail DON@DONBROWNFLORIDA.COM

Speaking: For Against Information

Representing AIF

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/4/14
Meeting Date

Topic CAT FUND

Bill Number 482 (if applicable)

Name CHRISTIAN CAMARA

Amendment Barcode (if applicable)

Job Title STATE DIRECTOR

Address PO Box 10577

Phone (305) 608-4300

TALLAHASSEE FL 32302
City State Zip

E-mail CCAMARA@RSTREET.ORG

Speaking: For Against Information

Representing R-Street INSTITUTE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ALAN HAYS
11th District

COMMITTEES:
Appropriations Subcommittee on General
Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Governmental Oversight and
Accountability, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Banking and Insurance
Commerce and Tourism

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining,
Co-Chair
Joint Legislative Auditing Committee
Joint Legislative Budget Commission

MEMORANDUM

To: Senator Wilton Simpson, Chair
Community Affairs Committee
CC: Tom Yeatman, Staff Director
Ann Whittaker, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 482 – Florida Hurricane Catastrophe Fund

Date: January 2, 2014

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 110, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: 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 Community Affairs

BILL: CS/CS/SB 380

INTRODUCER: Community Affairs Committee; Health Policy Committee; and Senators Bean and Brandes

SUBJECT: Obstetrical Services at Hospitals

DATE: February 4, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 380 requires a hospital to notify obstetrical physicians at least 120 days before closing its obstetrical department or ceasing to provide obstetrical services.

The bill repeals s. 383.336, F.S., which designates certain hospitals as “provider hospitals,” requires physicians in those hospitals to follow practice parameters when performing cesarean sections paid for by the state, and requires review of those cesarean sections by internal peer review boards.

The bill also prohibits health care facilities from employing or contracting with surgical technologists or surgical first assistants unless they meet certain educational and certification requirements, with certain exceptions.

II. Present Situation:

Obstetrical Services

Licensure Requirements for Obstetrical Services in Hospitals

As a requirement of licensure, hospitals report the emergency services they will provide on the application form to the Agency for Health Care Administration (AHCA).¹ These services, such as obstetrics, are then listed on the hospital's license,² and must be displayed conspicuously.³ Hospitals must notify AHCA of any change of service that affects information on their license by submitting a revised licensure application, between 60 and 120 days in advance of the change.⁴ The list of services is also used for the inventory of hospital emergency services maintained by AHCA.⁵ According to the AHCA website, there are currently 139 hospitals in Florida that are licensed to offer emergency obstetrical services.⁶

Closure of an Obstetrical Department in Bartow, Florida

In June of 2007 Bartow Regional Medical Center in Polk County announced to patients and physicians that it would close its obstetrics department at the end of July of the same year.⁷ Although many obstetrical physicians could continue to see patients in their offices, they would no longer be able to deliver babies at the hospital.⁸ Physicians and the local community protested the short timeframe for ceasing to offer obstetrical services. According to the Florida Medical Association and several physicians who worked at the hospital, the short notice "endangered pregnant women who [were] too close to delivery for obstetricians at other hospitals to want them as patients."⁹

Cesarean Births at Provider Hospitals

A cesarean section is a surgical procedure performed when a mother is not able to safely deliver vaginally. Instead, a baby is delivered through an incision in the mother's abdomen and uterus. Florida's rate of Cesarean deliveries increased from 22.8 percent in 1996 to 40.1 percent in 2011, which was consistently greater than the national average by several percent.¹⁰ Physicians avoid performing unnecessary cesarean sections, because cesarean births can result in babies being born with respiratory problems, and can put pregnant women at risk of medical complications, such as lacerations, infections, blood clots, and bleeding during subsequent pregnancies.¹¹

¹ AHCA, *Health Care Licensing Application: Hospitals*, at 13, http://ahca.myflorida.com/MCHQ/Corebill/Hospital/Application_Hospitals_Recommend.pdf (last visited Jan. 23, 2014).

² Section 408.806(4)(b), F.S.

³ Section 408.804, F.S.

⁴ Section 408.806(2)(c), F.S.

⁵ *See s. 395.1041(2)*, F.S.

⁶ AHCA, *Facility/Provider Locator*, <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (report generated Jan. 23, 2014).

⁷ Jennifer Starling, *Community Unites Against OB Closure*, THE POLK COUNTY DEMOCRAT, July 12, 2007, available at <http://ufdc.ufl.edu/UF00028292/00258/1x?vo=12> (last visited Dec. 20, 2013).

⁸ Robin Adams, *Bartow Hospital Plan Criticized*, THE LEDGER, July 11, 2007, available at <http://www.theledger.com/article/20070711/NEWS/707110433?p=1&tc=pg&tc=ar> (last visited Dec. 20, 2013).

⁹ *Id.*

¹⁰ AHCA, *Statistical Brief: Demographic Trends in Florida Cesarean Delivery, 1996-2010*, Issue No. 15 (September 2013); Florida Department of Health, *PRAMS Fact Sheet: Prevalence of Cesarean Delivery Among Florida Mothers* (2011).

¹¹ *Id.*

Presently s. 383.336, F.S., defines the term “provider hospital”¹² and creates certain requirements related to cesarean deliveries for such hospitals. Physicians in provider hospitals are required to comply with practice parameters designed to reduce the number of unnecessary cesarean sections performed within the hospital.¹³ These parameters must be followed by physicians when performing cesarean sections partially or fully paid for by the state. Section 383.336, F.S., also requires provider hospitals to establish a peer review board consisting of obstetric physicians and other persons with credentials to perform cesarean sections within the hospital. The board is required to review, on a monthly basis, all cesarean sections performed within the hospital that were partially or fully funded by the state.

These provisions are not currently implemented. Department of Health (DOH) rules regarding provider hospitals were repealed, effective July 1, 2013.¹⁴

Surgical Technologists and Assistants¹⁵

Role of Surgical Technologists

Surgical technologists, also called scrubs or operating room technicians,¹⁶ work under the supervision of surgeons to ensure that the operating room environment is safe, that equipment functions properly, and that the operative procedure is conducted under conditions that maximize patient safety. Surgical technologists are trained in aseptic technique and combine the knowledge of human anatomy, surgical procedures, and implementation tools and technologies, to facilitate a physician’s performance of invasive therapeutic and diagnostic procedures.¹⁷ Currently, no statutes or rules are in place to regulate the practice of surgical technology in Florida.

The Association of Surgical Technology (AST) is the oldest professional organization for surgical technologists and surgical assistants. The AST was established in 1969 by members of the American College of Surgeons, the American Hospital Association, and the Association of Perioperative Registered Nurses to ensure that surgical technologists and surgical assistants have the knowledge and skills to administer patient care of the highest quality. Some of the AST’s duties include creating and administering national certification procedures for surgical technologists, providing continuing education for such certification, working with national accrediting committees to establish standards for training programs, and advocating the interests of surgical technologists to government entities.¹⁸

¹² A provider hospital is a hospital in which 30 or more births occur annually that are paid for, partly or fully, by state funds or federal funds administered by the state. Section 383.336 (1), F.S.

¹³ Section 383.336(2), F.S., provides these parameters be established by the Office of the State Surgeon General in consultation with the Board of Medicine and the Florida Obstetric and Gynecologic Society, and directs these entities to consider the feasibility of attempting a vaginal delivery, dystocia, fetal distress, and fetal malposition.

¹⁴ Chapter 2012-31, ss. 9-10, Laws of Fla.

¹⁵ Information contained in this portion of this bill analysis is from the analysis for CS/CS/SB 360 by the Senate Appropriations Subcommittee on Health and Human Services (Apr. 17, 2013) (last visited Feb. 4, 2014).

¹⁶ United States Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 Edition: Surgical Technologists*, available at <http://www.bls.gov/ooh/healthcare/surgical-technologists.htm> (last visited Feb. 4, 2014).

¹⁷ Association of Surgical Technology, *Job Description: Surgical Technologist*, available at http://www.ast.org/professionals/documents/2009_Surgical_Technologist_Job_Description_10.6_Final.pdf (last visited Feb. 4, 2014).

¹⁸ AST, *About Us*, available at http://www.ast.org/aboutus/about_ast.aspx (last visited Feb. 4, 2014).

The AST has published national guidelines for the scope of practice of surgical technologists.¹⁹ It designates three different categories of technologist, each with different functions. A scrub technologist maintains sterility and handles necessary instruments, supplies, and equipment during a surgical procedure. A circulating technologist assists the circulating nurse in obtaining additional instruments, supplies, and equipment during the procedure. A second assisting technologist maintains sterility and assists the surgeon and the surgeon's first assistant during the procedure. More detailed duties are:

Scrub Technologist

- Check supplies and equipment needed for the surgical procedure;
- Scrub, gown, and glove;
- Set up the sterile table with instruments, supplies, equipment, and medications needed for the procedure;
- Perform appropriate counts with the circulator prior to the operation and before the incision is closed;
- Gown and glove the surgeon and assistants;
- Help in draping the sterile field;
- Pass instruments to the surgeon during the procedure;
- Prepare sterile dressings;
- Clean and prepare instruments for terminal sterilization;
- Assist other members of the surgical team with terminal cleaning of the operating room; and
- Assist in preparing the operating room for the next patient.

Circulating Technologist

- Obtain appropriate sterile and unsterile items needed for the procedure;
- Open sterile supplies;
- Check the patient's chart, identify the patient, verify the surgery to be performed with consent forms, and bring the patient to the assigned operating room;
- Transfer the patient to the operating table;
- Assess the patient's comfort and safety and provide verbal and tactile reassurance;
- Assist anesthesia personnel;
- Position the patient, using appropriate equipment;
- Apply electrosurgical grounding pads, tourniquets, monitors, etc., before the procedure begins;
- Prepare the patient's skin prior to draping by the surgical team;
- Perform appropriate counts with the scrub nurse or technologist prior to the operation and before the incision is closed;
- Anticipate additional supplies needed during the procedure;
- Keep accurate records throughout the procedure;
- Properly care for specimens;
- Secure dressings after incision closure;
- Help transport the patient to the recovery room; and

¹⁹ AST, *supra* note 17.

- Assist in cleaning the operating room and in preparing for the next patient.

Second Assisting Technologist

- Hold retractors or instruments as directed by the surgeon;
- Sponge or suction the operative site;
- Apply electrocautery to clamps on bleeding blood vessels;
- Cut suture material as directed by the surgeon;
- Connect drains to suction apparatus; and
- Apply dressings to the closed wound.

Education and Certification

Surgical technologists must have a high school diploma or equivalent and must complete a training program accredited by the Commission on Accreditation of Allied Health Education Programs or the Accrediting Bureau of Health Education Schools. The training program includes classroom education in anatomy, microbiology, pharmacology, ethics, medical terminology, and other topics, as well as supervised clinical experience. Surgical technologist training lasts from 9 to 24 months and culminates in a certificate, diploma, or associate's degree.

Professional certification is not required for employment as a surgical technologist, although most employers prefer to hire only certified individuals.²⁰ Professional certification is available through the AST as a Certified Surgical Technologist (CST).²¹ Requirements for CST designation include graduation from an accredited surgical technology program (with special exceptions for military-trained technologists), payment of fees, and passage of an examination offered by the National Board of Surgical Technology and Surgical Assisting (NBSTSA).²² The CST certification is valid for four years. To renew, an individual must either retake and pass the NBSTSA examination required for initial certification or complete 60 hours of continuing education. A renewal fee is also required.²³

National certification may also be obtained from the National Center for Competency Testing (NCCT),²⁴ which awards the "Tech in Surgery-Certified (NCCT)" designation. Applicants must graduate from an NCCT-approved surgical technology program, complete required practical experience, and pass the organization's certification exam. Applicants who have not graduated from an approved surgical technology program may also qualify for certification if they have accrued some amount of practical experience, which varies depending on the situation. Passage of the examination and payment of fees is still required.²⁵ The NCCT certification must be

²⁰ See *supra* note 17.

²¹ *Id.*

²² NBSTSA, *CST Examinations*, <http://nbstsa.org/examinations-cst.html> (last visited Feb. 4, 2014).

²³ NBSTSA, *Renewal Options*, <http://nbstsa.org/renewal/index.html> (last visited Feb. 4, 2014).

²⁴ The NCCT is an independent entity which provides competency examinations and certifications for a variety of allied health professions, including medical assistants, phlebotomy technicians, patient care technicians, surgical technologists, and medical office assistants. It is not a professional organization. NCCT, *National Center for Competency Testing (NCCT)*, <http://www.ncctinc.com/General/> (last visited Feb. 4, 2014).

²⁵ NCCT, *Certification Information*, <http://www.ncctinc.com/Certifications/> (last visited Feb. 4, 2014).

renewed annually by completing 14 hours of continuing education and paying a recertification fee.²⁶

As of April 2013, there were approximately 4,800 surgical technologists employed in Florida. Of these, more than 3,400 were CSTs, and a few dozen held the Tech in Surgery-Certified (NCCT) designation.²⁷

Role of Surgical First Assistants

Surgical assistants provide aid in exposure, hemostasis, closure, and other intraoperative technical functions under the direct supervision of surgeons to help carry out safe operations with optimal results for patients. In addition to intraoperative duties, surgical assistants also perform preoperative and postoperative duties to better facilitate proper patient care.²⁸ Surgical first assistants provide primary assistance to the primary surgeon, must be listed on the operative record as first assistants, and cannot be involved in any other role during the procedure.²⁹ The primary professional organizations for surgical assistants are the Association of Surgical Technology (AST) and the National Surgical Assistant Association (NSAA). The NSAA was formed by surgical assistants in 1983 and was the nation's first organization to provide standards for competency, professionalism, and scope of practice in the field.³⁰

Duties within the scope of practice of a surgical assistant include positioning the patient; providing visualization of the operative site, including appropriate placement of retractors, suctioning and sponging, and manipulation of suture materials; assisting with hemostasis; participating in volume replacement or autotransfusion techniques, as appropriate; assisting with wound closure, including administration of sutures and subcutaneous injection of local anesthetics; selecting and applying wound dressings; and providing assistance in securing drainage systems to tissue.³¹ Surgical assistants must be familiar with operating room procedures and able to anticipate the needs of the surgeon.³²

Surgical First Assistants in Statute

Registered nurses licensed under ch. 464, F.S., may serve as surgical first assistants if they are certified in perioperative nursing through a year-long training program fulfilling certain conditions. Such nurses may be reimbursed by insurance companies for their first assistant services at a rate not less than 80 percent of what a physician would be paid for the same services.³³

²⁶ NCCT, *Recertification/CE*, <http://www.ncctinc.com/CE/> (last visited Feb. 4, 2014).

²⁷ Email correspondence with the Florida State Assembly of the Association of Surgical Technologists. A copy of this correspondence is on file with the Senate Health Policy Committee.

²⁸ Association of Surgical Technologists, *Job Description: Surgical Assistant*, available at: http://www.ast.org/professionals/documents/2011_%20Surgical%20Assistant_Job_Description_4.5.pdf (last visited Feb. 4, 2014).

²⁹ American Board of Surgical Assistants, *Definitions*, <http://www.absa.net/definitions.php> (last visited Feb. 4, 2014).

³⁰ NSAA, *Welcome*, <http://www.nsaa.net/index.php> (last visited Feb. 4, 2014).

³¹ See *supra* note 28.

³² NSAA, *Scope of Practice*, http://www.nsaa.net/scope_of_practice.php (last visited Feb. 4, 2014).

³³ Sections 464.027, 409.906(21), F.S.

Physician assistants may also be reimbursed by insurance companies for surgical first assistant services if they act as substitutes for physicians who would have performed the same services.³⁴

National Certification of Surgical First Assistants

AST: Certified Surgical First Assistant

An applicant for the Certified Surgical First Assistant (CSFA) designation must fulfill at least one of the following:

- Be a graduate of a surgical assistant program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP);
- Hold current certification as a Certified Surgical Technologist from the AST, have participated in at least 350 cases within the last four years, and have completed at least two full years of surgical first assistant experience; or
- Hold current surgical assistant certification from the NSAA or the American Board of Surgical Assistants (ABSA), have completed 50 hours of AST-approved continuing education within the last two years, show proof of operative case experience, and have at least an associate's degree.

Eligible applicants may register to take the CSFA exam offered by the National Board of Surgical Technology and Surgical Assisting (NBSTSA).³⁵ The NBSTSA was previously known as the Liaison Council on Certification for the Surgical Technologist (LCCST). After passage of the exam and payment of \$290 in fees, an applicant may be certified.³⁶

The CSFA certification must be renewed every four years, either by retaking and passing the initial certification examination or completing 75 hours of continuing education approved by the AST. Recertification by examination costs \$499.³⁷ Recertification by continuing education costs \$6 per credit hour for AST members and \$400 for non-members.³⁸

More than 2,100 people held CSFA certification, as of April 2013.³⁹

NSAA: Certified Surgical Assistant

Applicants for the Certified Surgical Assistant (CSA) designation must be graduates of approved surgical assistant training programs or provide documentation of 2,250 hours of assisting experience, along with several letters of reference from supervising surgeons. Applicants must also pass a multiple-choice examination offered by the NSAA which covers subjects such as anatomy, medical terminology, technical surgical skills, sterile technique, and anesthesia, and pay \$400 in fees. Discounts apply for recent graduates and military personnel, and certification by endorsement is available to nurses, physician assistants, and other practitioners under certain conditions.

³⁴ Section 627.419(6), F.S.

³⁵ Edu-Search, *Surgical Technology Certification*, <http://www.surgicaltechnologists.net/education/certification> (last visited Feb. 4, 2014).

³⁶ NBSTSA, *CSFA Examination*, <http://nbtsa.org/examinations-csfa.html> (last visited Feb. 4, 2014).

³⁷ NBSTSA, *Renewal Options*, <http://nbtsa.org/renewal/index.html> (last visited Feb. 4, 2014).

³⁸ AST, *Certification*, <http://www.ast.org/membership/certification.aspx> (last visited Feb. 4, 2014).

³⁹ Telephone conversation with NBSTSA staff.

The CSAs must be recertified every two years by completing 50 hours of approved continuing education or retaking and passing the initial certification exam. Recertification fees for NSAA non-members are \$700 if via continuing education and \$900 if via reexamination. Fees for NSAA members are \$100 if via continuing education or reexamination.⁴⁰

More than 1,300 people held CSA certification nationally, as of April 2013.⁴¹

ABSA: Surgical Assistant-Certified

To be eligible for ABSA certification, an applicant must hold at least an associate's degree with a "C" grade or higher in specified college-level courses, have completed an ABSA- or CAAHEP-approved surgical assistant training program, and have passed the ABSA Surgical Assistant-Certified (SA-C) examination. The examination consists of both multiple-choice and practical components and is offered four times per year in Miami, Chicago, New Jersey, and Houston. Payment of a \$710 fee is also required.

The SA-C certification must be renewed biennially by retaking and passing the initial certification exam or by completing certain professional development activities. Such activities include reading professional journals, presenting at a hospital seminar, publishing clinical research, and attending medical conferences. Each certified individual must also document participation as a surgical first assistant in either 400 surgical cases or 1,500 procedure hours and hold current certification in cardiopulmonary resuscitation (CPR), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS). Recertification via examination costs \$180 while recertification via professional development costs \$100.⁴²

More than 1,400 people held active SA-C certification, as of April 2013.⁴³

III. Effect of Proposed Changes:

Section 1 of the bill repeals s. 383.336, F.S., relating to provider hospitals.

Section 2 of the bill amends s. 395.0191, F.S., to add a new subsection concerning surgical technologists and surgical assistants. The bill provides definitions for "certified surgical assistant," "certified surgical technologist," "surgeon," "surgical assistant," and "surgical technologist."

The bill states that a facility may not employ or contract with any person to perform the duties of a surgical assistant or surgical technologist unless that person is a certified surgical assistant or certified surgical technologist. These employment prohibitions do not apply to:

⁴⁰ NSAA, *FAQs*, <http://nsaa.net/faq.php> (last visited Feb. 4, 2014); NSAA, *Certification*, <http://www.nsaa.net/requirements.php> (last visited Feb. 4, 2014).

⁴¹ Telephone conversation with NSAA staff.

⁴² ABSA, *Candidate Information Booklet and Certification Examination Review Guide 2011-2012*, available at http://www.absa.net/pdf/ABSA_Guide_2011-2012.pdf (last visited Feb. 4, 2014).

⁴³ ABSA, *History and Statistics*, <http://www.absa.net/statistics.php> (last visited Feb. 4, 2014).

- A person employed or contracted to perform the duties of a surgical technologist or surgical assistant at any time between January 1, 2014, and December 31, 2014;
- Any health care practitioner as defined in s. 456.001, F.S., or any student, if the duties performed fall within the scope of the practitioner's or the student's training and practice; or
- Any person enrolled in a surgical technology or surgical assisting training program accredited by CAAHEP, the Accrediting Bureau of Health Education Schools (ABHES), or another accrediting body recognized by the United States Department of Education. Such a person may practice for one year after completion of a training program before he or she is required to be certified.

Section 3 of the bill amends s. 395.1051, F.S., to require hospitals to give at least a 120 day advanced notice to each obstetrical physician with clinical privileges at that hospital if the hospital intends to close its obstetrical department or cease providing obstetrical services unless the hospital can demonstrate that it was impossible to do so within this timeframe.

Although specific penalties are not listed for violating the notification provisions, the AHCA has the authority to fine a health care facility up to \$500 for a non-designated violation.⁴⁴ Such non-designated violations include violating any provision of that health care facility's authorizing statute.⁴⁵

Section 4 of the bill provides an effective date of July 1, 2014.

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:

People wishing to practice as surgical technologists or surgical first assistants in Florida would be required to pay several hundred dollars in fees required to maintain national certification, unless they fall under one of the bill's exceptions.

⁴⁴ A non-designated violation is any violation that is not designated as class I-IV. See s. 408.813(3), F.S.

⁴⁵ Section 408.813(3)(b), F.S.

B. Private Sector Impact:

The bill may have a positive fiscal impact for obstetrical physicians who receive this notice to allow them adequate time to ensure that they obtain privileges at another hospital. Advanced notice will also allow the patient to adequately plan for delivery at another location. The bill may have a negative fiscal impact on hospitals that fail to comply due to potential administrative fines.

Surgical technologists and surgical first assistants who do not meet any of the eligibility requirements in the bill will be unable to practice these occupations at Florida health care facilities. Businesses that offer continuing education courses and examination preparatory courses to surgical technologists and surgical first assistants are likely to receive more business as a result of the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 395.1051, 395.0191.

This bill repeals section 383.336 of the Florida Statutes.

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

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

CS/CS by Community Affairs on February 4, 2014:

Amends the bill to prohibit health care facilities from employing or contracting with surgical technologists or surgical first assistants unless they meet certain educational and certification requirements, with certain exceptions.

Also, removes the provision that a hospital must provide notice as soon as practicable when ceasing to provide obstetrical services, if notice cannot be provided at least 120 days in advance.

CS by Health Policy on January 8, 2014:

Amends the bill to repeal s. 383.336, F.S., related to provider hospitals; to delete

language granting rulemaking authority to the DOH; and to require a hospital to provide notice as soon as practicable if it is impossible for a hospital to provide 120 days' notice.

B. Amendments:

None.

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



494604

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2014	.	
	.	
	.	
	.	

The Committee on Community Affairs (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 12 and 13

insert:

Section 2. Present subsections (1) through (10) of section 395.0191, Florida Statutes, are redesignated as subsections (2) through (11), respectively, and new subsections (1) and (12) are added to that section, to read:



494604

395.0191 Staff membership and clinical privileges.—

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

(a) "Certified surgical assistant" means a surgical assistant who maintains a valid and active certification under one of the following designations:

1. Certified surgical first assistant, from the National Board of Surgical Technology and Surgical Assisting.

2. Certified surgical assistant, from the National Surgical Assistant Association.

3. Surgical assistant-certified, from the American Board of Surgical Assistants.

(b) "Certified surgical technologist" means a surgical technologist who maintains a valid and active certification as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting.

(c) "Surgeon" means a health care practitioner as defined in s. 456.001 whose scope of practice includes performing surgery and who is listed as the primary surgeon in the operative record.

(d) "Surgical assistant" means a person who provides aid under the supervision of a surgeon in exposure, hemostasis, closures, and other intraoperative technical functions and who assists the surgeon in performing a safe operation with optimal results for the patient.

(e) "Surgical technologist" means a person who assists and practices under the supervision of a surgeon to ensure that the operating room environment is safe, that proper equipment is available, and that the operative procedure is conducted efficiently. Surgical technologist duties include, but are not



39 limited to, maintaining sterility during a surgical procedure,
40 handling and ensuring the availability of necessary equipment
41 and supplies, and maintaining visibility of the operative site.

42 (12) (a) A facility may not employ or contract with any
43 person to perform the duties of a surgical assistant unless the
44 person is a certified surgical assistant.

45 (b) A facility may not employ or contract with any person
46 to perform the duties of a surgical technologist unless the
47 person is a certified surgical technologist.

48 (c) Paragraphs (a) and (b) do not apply to:

49 1. A person who was employed or contracted to perform the
50 duties of a surgical technologist or surgical assistant at any
51 time between January 1, 2014, and December 31, 2014.

52 2. A health care practitioner as defined in s. 456.001 or a
53 student if the duties that the practitioner or the student
54 performs fall within the scope of the practitioner's or the
55 student's training and practice.

56 3. A person enrolled in a surgical technology or surgical
57 assisting training program accredited by the Commission on
58 Accreditation of Allied Health Education Programs, the
59 Accrediting Bureau of Health Education Schools, or another
60 accrediting body recognized by the United States Department of
61 Education on July 1, 2014. A person may practice as a surgical
62 technologist or a surgical assistant for 1 year after completion
63 of such a training program before he or she is required to meet
64 the criteria in paragraph (a) or paragraph (b).

65
66 ===== T I T L E A M E N D M E N T =====

67 And the title is amended as follows:



494604

68 Delete lines 2 - 4
69 and insert:
70 An act relating to the responsibilities of health care
71 facilities; repealing s. 383.336, F.S., relating to
72 provider hospitals; amending s. 395.0191, F.S.;
73 defining terms; prohibiting a health care facility
74 from employing or contracting with a surgical
75 assistant or surgical technologist under certain
76 circumstances; providing exceptions; amending s.
77 395.1051, F.S.; requiring a



322334

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2014	.	
	.	
	.	
	.	

The Committee on Community Affairs (Bradley) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 31 - 33
4 and insert:
5 obstetrical physician.

By the Committee on Health Policy; and Senators Bean and Brandes

588-00973-14

2014380c1

1 A bill to be entitled
2 An act relating to obstetrical services at hospitals;
3 repealing s. 383.336, F.S., relating to provider
4 hospitals; amending s. 395.1051, F.S.; requiring a
5 hospital to notify obstetrical physicians before the
6 hospital closes its obstetrical department or ceases
7 to provide obstetrical services; providing an
8 effective date.

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

11
12 Section 1. Section 383.336, Florida Statutes, is repealed.

13 Section 2. Section 395.1051, Florida Statutes, is amended
14 to read:

15 395.1051 Duty to notify patients and obstetrical
16 physicians.—

17 (1) An appropriately trained person designated by each
18 licensed facility shall inform each patient, or an individual
19 identified pursuant to s. 765.401(1), in person about adverse
20 incidents that result in serious harm to the patient.
21 Notification of outcomes of care which ~~that~~ result in harm to
22 the patient under this section does ~~shall~~ not constitute an
23 acknowledgment or admission of liability and may not, ~~nor can it~~
24 be introduced as evidence.

25 (2) A hospital shall notify each obstetrical physician who
26 has privileges at the hospital at least 120 days before the
27 hospital closes its obstetrical department or ceases to provide
28 obstetrical services, unless the hospital can demonstrate it was
29 impossible for the hospital to provide 120 days' notice due to

588-00973-14

2014380c1

30 circumstances beyond the control of the hospital or the
31 obstetrical physician. If a hospital is unable to provide 120
32 days' notice, the hospital must provide notice as soon as
33 practicable.

34 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-4-14

Meeting Date

Topic Surgical Assistants / Surgical techs

Bill Number SB 380

Name Melaney Cordell

Amendment Barcode 494604
(if applicable)

Job Title Lobbyist

(if applicable)

Address _____
Street

Phone _____

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing Association of Surgical Assistants & Assoc. of Surgical Technologists

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/14

Meeting Date

Topic _____

Bill Number SB 380
(if applicable)

Name Jeff Scott

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1430 Piedmont Dr. East

Phone 224-6496

Street

Tallahassee

FL

32308

City

State

Zip

E-mail jscott@medone.org

Speaking: For Against Information

Representing Florida Medical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

WHITTAKER.ANN

From: KOTAS.JAMES
Sent: Monday, January 13, 2014 3:44 PM
To: YEATMAN.TOM; WHITTAKER.ANN
Subject: CS/SB 380: Obstetrical Services at Hospitals

Tom: Senator Bean would like Chair Simpson's consideration to agenda CS/SB 380: Obstetrical Services at Hospitals on the next Community Affairs Agenda.

Thank you,
James



James Kotas | Chief Legislative Aide

Senator Aaron Bean | Florida Senate 4th District

1919 Atlantic Boulevard | Jacksonville FL 32207

Main 904.346.5039 | Tallahassee 850.487.5004 | Fax 888.263.1578

kotas.james@flsenate.gov | www.flsenate.gov





THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR AARON BEAN

4th District

January 29, 2014

The Honorable Wilton Simpson, Chair
Committee on Community Affairs
322 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Simpson:

Thank you for scheduling Committee Substitute for Senate Bill 380, a bill related to Obstetrical Services at Hospitals, for hearing in your committee on Tuesday, February 4, 2014.

Like many members I am experiencing scheduling problems. I respectfully request that my legislative assistant, James Kotas, be allowed to present my bill on my behalf.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Aaron Bean".

Aaron Bean
State Senator, 4th District

Cc: Tom Yeatman, Staff Director
Ann Whittaker, Committee Administrative Assistant

/jk

REPLY TO:

- 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
- 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: 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 Community Affairs

BILL: SB 388
 INTRODUCER: Senator Bean
 SUBJECT: Public Retirement Plans
 DATE: February 4, 2014 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Favorable
2.	White	Yeatman	CA	Favorable
3.			AFT	
4.			AP	

I. Summary:

SB 388 provides that a consolidated government that has entered into an interlocal agreement to provide police protection services to another incorporated municipality is eligible to receive the premium taxes reported for the other municipality under certain circumstances. The bill authorizes the municipality receiving the police protection services to enact an ordinance levying the premium tax as provided by law and to distribute those premium tax revenues reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

In 2013, the Revenue Estimating Conference estimated that identical legislation would have had an insignificant negative fiscal impact on the state General Revenue Fund and a corresponding insignificant positive fiscal impact on local government revenues by shifting these tax revenues from the state to the local governments.

II. Present Situation:

Municipal Police Pensions

Chapter 185, F.S., provides funding for municipal police officers' pension plans. It provides for a "uniform retirement system" with defined benefit retirement plans for municipal police officers and sets standards for the operation and funding of these pension systems.¹ Each municipality with a municipal police officers' retirement trust fund is authorized to assess an excise tax of .85 percent of the gross amount of receipts of premiums from policyholders on casualty insurance policies covering property within its corporate limits.² Revenues from this excise tax are one of the funding sources for police officers' pension plans. Currently, a municipality is eligible to receive state premium taxes (or excise taxes) only on those premiums for casualty

¹ Section 185.01, F.S.

² Section 185.08, F.S.

insurance policies covering property within its municipal limits. A municipality that provides police protection services outside of its municipal limits through an interlocal agreement is not eligible to receive premium tax revenue for casualty policies covering the property where the service is being provided.³

In order to qualify for the premium taxes, a police officers' pension plan must meet certain requirements in ch. 185, F.S.⁴ The Department of Management Services (DMS) oversees and monitors these pension plans; however, day-to-day operational control rests with local boards of trustees.⁵ Any premium taxes collected by and distributed to a municipality for funding police officers' pension plans have a negative impact on the General Revenue Fund because those premium taxes paid by an insurance company under ch. 185, F.S., to a municipality are allowed as a credit against premium taxes the insurance company must pay to the state under s. 624.509, F.S.

Chapter 185, F.S., applies only to municipalities organized and established pursuant to the laws of the state, and does not apply to the unincorporated areas of any county or counties or to any governmental entity whose police officers are eligible to participate in the Florida Retirement System.

Firefighter Pensions

Under current law, a municipality may receive another municipality's premium tax revenues (associated with the tax on property insurance premiums) when there is an interlocal agreement in place to provide fire protection services.⁶ The municipality receiving fire services must levy the tax authorized by ch. 175, F.S., and copies of the interlocal agreement and the municipal ordinance levying the tax must be provided to the Division of Retirement within DMS.

Consolidation

Consolidation combines city and county governments so that the boundaries of the county and an affected city or cities become the same. Consolidation can be total or partial. Total consolidation occurs when all independent governmental units within a county are assimilated into the consolidated government. When some of the governments remain independent, the consolidation is partial. Nationally, few successful city-county consolidations exist. According to the National Association of Counties, only 31 of the 3,066 county governments in the United States are combined city/county governments.

Section 3, Article VIII, of the Florida Constitution, reads as follows:

Consolidation. —The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. The consolidation plan may be proposed only by

³ *Id.*

⁴ *See* ss. 185.10, 185.085, F.S.

⁵ Section 185.05, F.S.

⁶ Section 175.041, F.S.

special law, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected. Consolidation shall not extend the territorial scope of taxation for the payment of pre-existing debt except to areas whose residents receive a benefit from the facility or service for which the indebtedness was incurred.

Prior to 1933, the Florida Constitution of 1885 was silent on the subject of consolidation. The 1933 Legislature passed a constitutional amendment specifically declaring its own power to establish a municipal corporation consolidating the governments of Duval County and any of the municipalities within its boundaries, subject to referendum approval of the affected voters. The electorate of Florida adopted this amendment in 1934.

The voters of the City of Jacksonville and Duval County did not adopt a municipal charter pursuant to this constitutional provision until 1967, and to date, only Duval County and the City of Jacksonville have taken advantage of the specific constitutional authority to consolidate. Section 9, Art. VIII of the Constitution of 1885 establishes the Jacksonville/Duval County consolidated charter. Section 6(e), Art. VIII of the State Constitution provides that s. 9, Art. VIII of the Constitution of 1885 remained in full force and effect after the adoption of the 1968 revision. The municipalities of Atlantic Beach, Baldwin, Jacksonville Beach, and Neptune Beach are not consolidated with Duval County.

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 185.03 and 185.08, F.S., respectively, to allow a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution, to receive the distribution of premium tax revenues related to casualty insurance premiums covering property within a non-consolidated municipality with the county's boundaries. The consolidated government must notify the Division of Retirement of the DMS when it has entered into an interlocal agreement to provide police services to a municipality within its boundaries. The municipality may enact an ordinance levying the tax as provided in s. 185.08, F.S. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, DMS may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

Section 3 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to: require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

The Revenue Estimating Conference estimated that the proposed legislation would have a negative insignificant fiscal impact on the state General Revenue Fund and a corresponding positive insignificant fiscal impact on local government revenues by shifting these tax revenues from the state to the local governments.

B. Private Sector Impact:

None. Although the bill authorizes a municipality to enact a tax on insurance premiums, the municipal taxes are fully credited against the state taxes on insurance premiums.

C. Government Sector Impact:

The Department of Revenue (DOR) will be notified by the Division of Retirement (within the Department of Management Services) of any additional taxing jurisdiction as a result of the language of this bill. DOR will need to add those jurisdictions to the insurance premium tax form in the annual form process. The form will be adopted in a rule in the annual form adoption process. Additionally, this bill will require changes to the Insurance Premium Database to determine situs of premiums for allocation purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 2005, the Legislature made similar changes to ch. 175, F.S., relating to the Firefighters' Pension Trust Fund. Sections 175.041 and 175.101, F.S., allow a municipality to receive excise tax monies for firefighter pension plans from another municipality if there is an interlocal agreement in place to provide fire protection services.

VIII. Statutes Affected:

This bill substantially amends sections 185.03 and 185.08 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Bean

4-00352A-14

2014388__

1 A bill to be entitled
2 An act relating to public retirement plans; amending
3 ss. 185.03 and 185.08, F.S.; specifying the
4 applicability of ch. 185, F.S., to certain
5 consolidated governments; providing that a
6 consolidated government that has entered into an
7 interlocal agreement to provide police protection
8 services to a municipality within its boundaries is
9 eligible to receive the premium taxes reported for the
10 municipality under certain circumstances; authorizing
11 the municipality receiving the police protection
12 services to enact an ordinance levying the tax as
13 provided by law; including certain consolidated
14 governments under provisions authorizing imposition of
15 a state excise tax on casualty insurance premiums
16 covering certain property; providing an effective
17 date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsection (2) of section 185.03, Florida
22 Statutes, is amended to read:

23 185.03 Municipal police officers' retirement trust funds;
24 creation; applicability of provisions; participation by public
25 safety officers.—For any municipality, chapter plan, local law
26 municipality, or local law plan under this chapter:

27 (2) (a) ~~The provisions of This chapter applies shall apply~~
28 only to municipalities organized and established pursuant to the
29 laws of the state, and does said provisions shall not apply to

4-00352A-14

2014388__

30 the unincorporated areas of a any county or counties ~~nor shall~~
31 ~~the provisions hereof apply to a any~~ governmental entity whose
32 police officers are eligible to participate in the Florida
33 Retirement System.

34 (b) With respect to the distribution of premium taxes, a
35 single consolidated government consisting of a former county and
36 one or more municipalities, consolidated pursuant to s. 3 or s.
37 6(e), Art. VIII of the State Constitution, is also eligible to
38 participate under this chapter. The consolidated government
39 shall notify the division when it has entered into an interlocal
40 agreement to provide police services to a municipality within
41 its boundaries. The municipality may enact an ordinance levying
42 the tax as provided in s. 185.08. Upon being provided copies of
43 the interlocal agreement and the municipal ordinance levying the
44 tax, the division may distribute any premium taxes reported for
45 the municipality to the consolidated government as long as the
46 interlocal agreement is in effect.

47 Section 2. Subsection (1) of section 185.08, Florida
48 Statutes, is amended to read:

49 185.08 State excise tax on casualty insurance premiums
50 authorized; procedure.—For any municipality, chapter plan, local
51 law municipality, or local law plan under this chapter:

52 (1) (a) Each incorporated municipality in this state
53 described and classified in s. 185.03, as well as each other
54 city or town of this state which on July 31, 1953, had a
55 lawfully established municipal police officers' retirement trust
56 fund or city fund, by whatever name known, providing pension or
57 relief benefits to police officers as provided under this
58 chapter, may assess and impose on every insurance company,

4-00352A-14

2014388__

59 corporation, or other insurer now engaged in or carrying on, or
60 who shall hereafter engage in or carry on, the business of
61 casualty insurance as shown by records of the Office of
62 Insurance Regulation of the Financial Services Commission, an
63 excise tax in addition to any lawful license or excise tax now
64 levied by each of the ~~said~~ municipalities, respectively,
65 amounting to .85 percent of the gross amount of receipts of
66 premiums from policyholders on all premiums collected on
67 casualty insurance policies covering property within the
68 corporate limits of such municipalities, respectively.

69 (b) This section applies to a municipality consisting of a
70 single consolidated government consisting of a former county and
71 one or more municipalities, consolidated pursuant to s. 3 or s.
72 6(e), Art. VIII of the State Constitution, and to casualty
73 insurance policies covering property within the boundaries of
74 the consolidated government, regardless of whether the
75 properties are located within one or more separately
76 incorporated areas within the consolidated government, and
77 provided the properties are being provided with police
78 protection services by the consolidated government.

79 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/14

Meeting Date

Topic Pension

Bill Number SB 388
(if applicable)

Name Paul Carter-Smith

Amendment Barcode _____
(if applicable)

Job Title Consultant

Address 502 North Adams

Phone 222-6050

Street

City

Tallah FL 32301

State

Zip

E-mail _____

Speaking: For Against Information

Representing Jacksonville Police Fire Pension

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.



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: January 15, 2014

I respectfully request that **Senate Bill #388**, relating to Public Retirement Plans, be placed on the:

- Committee agenda at your earliest possible convenience.
- Next committee agenda, IF received.

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR AARON BEAN

4th District

January 29, 2014

The Honorable Wilton Simpson, Chair
Committee on Community Affairs
322 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Simpson:

Thank you for scheduling Senate Bill 388, a bill related to Public Retirement Plans, for hearing in your committee on Tuesday, February 4, 2014.

Like many members I am experiencing scheduling problems. I respectfully request that my legislative assistant, Dee Alexander, be allowed to present my bill on my behalf.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Aaron Bean".

Aaron Bean
State Senator, 4th District

Cc: Tom Yeatman, Staff Director
Ann Whittaker, Committee Administrative Assistant

/jk

REPLY TO:

- 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
- 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: 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 Community Affairs

BILL: SB 356

INTRODUCER: Senator Thrasher and others

SUBJECT: Regulation of Public Lodging Establishments and Public Food Service Establishments

DATE: February 4, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Favorable

I. Summary:

SB 356 repeals the provision in s. 509.032(7), F.S., that prohibits local laws, ordinances, or regulations from restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy.

II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the state agency charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.

The term “public lodging establishments” includes transient and nontransient public lodging establishments.¹ The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the length of the rentals.

Section 509.013(4)(a)1., F.S., defines a “transient public lodging establishment” to mean:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

Section 509.013(4)(a)2., F.S., defines a “nontransient public lodging establishment” to mean:

¹ Section 509.013(4)(a), F.S.

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Section 509.013(4)(b), F.S., exempts the following types of establishments from the definition of “public lodging establishment”:

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.
2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Family Services or other similar place regulated under s. 381.0072.
3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.
4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.
5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.
6. Any establishment inspected by the Department of Health and regulated by chapter 513.
7. Any nonprofit organization that operates a facility providing housing only to patients, patients’ families, and patients’ caregivers and not to the general public.
8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department’s behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.
9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, or bed and breakfast inn.²

Section 509.242(1)(c), F.S., defines the term “vacation rental” as:

² Section 509.242(1), F.S.

any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment.

The 37,155 public lodging establishments licensed by the division are distributed as follows:³

- Hotels – 1,676 licenses;
- Motels – 2,751 licenses;
- Nontransient apartments – 17,515 licenses;
- Transient apartments – 981 licenses;
- Bed and Breakfast Inns – 262 licenses;
- Vacation rental condominiums – 3,608 licenses; and
- Vacation rental dwellings – 10,362 licenses.

The department licenses vacation rentals either as condominiums or dwellings.⁴ A vacation rental license will be issued for “a single-family house, a townhouse, or a unit or group of units in a duplex, triplex, quadruplex, or other dwelling unit that has four or less units collectively.”⁵

Section 509.032(7)(a), F.S., provides that “the regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state.” This section was amended in 2011 to add the provisions relating to local government zoning of vacation rentals.⁶

Section 509.032(7)(b), F.S., provides that local laws, ordinances, or regulations may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. However, this prohibition does not apply to any local law, ordinance, or rule adopted on or before June 1, 2011.

Section 509.032(7)(c), F.S., provides that the prohibition in s. 509.032(7)(b), F.S., does not apply to local laws, ordinances, or regulations exclusively relating to property valuation as a criterion for vacation rental if the law, ordinance or regulation is required to be approved by the

³ *Division of Hotels and Restaurants Annual Report for FY 2012-2013*, Department of Business and Professional Regulation. A copy of the report is available at:

http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2012_13.pdf (Last visited January 6, 2014).

⁴ Rule 61C-1.002(4)(a)1., F.A.C.

⁵ Vacation rental dwellings are divided into single - 9,459, group - 91, and collective – 812. A single license may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity. A group license is a license issued by the division to a licensed agent to cover all units within a building or group of buildings in a single complex. A collective license is a license issued by the division to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses per license.

⁶ See s. 2, ch. 2011-119, L.O.F.

Department of Community Affairs (DCA) pursuant to an area of critical state concern designation.⁷

Attorney General Opinion

The office of the Attorney General issued an Informal Legal Opinion on October 22, 2013, regarding whether Flagler County could intercede and stop vacation rental operations, as defined in ch. 509, F.S., in private homes that were zoned, prior to June 1, 2011, for single-family residential use.⁸ According to the opinion, “due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood.” Flagler County had no regulation governing vacation rentals before the June 1, 2011, grandfather date in s. 509.032(7)(b), F.S. The Attorney General concluded that the fact that the county had a local zoning ordinance for single-family homes existing on or before June 1, 2011, did not restrict the rental of such property as a vacation rental and that such zoning ordinances could not now be interpreted to restrict vacation rentals.

III. Effect of Proposed Changes:

The bill repeals s. 509.032(7)(b) and (c), F.S. The repeal of these provisions would allow local governments to enact local laws, ordinances, or regulations restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy.

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.

⁷ This exemption relates to the Village of Islamorada. According to a representative for the village, its housing ordinance is regularly amended at the DCA's direction, and without this provision they were concerned that the grandfather provision in s. 509.032(7)(b), F.S., would not be sufficient.

⁸ Florida Attorney General, Informal Legal Opinion to Mr. Albert Hadeed, Flagler County Attorney, regarding “Vacation Rental Operation-Local Ordinances,” dated October 22, 2013.

B. Private Sector Impact:

The bill does not directly impact the operation of vacation rentals. However, the owners of vacation rentals may be affected by the bill to the extent that local governments amend their laws, ordinances, or regulations to restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 509.032 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Thrasher

6-00568-14

2014356__

1 A bill to be entitled
2 An act relating to the regulation of public lodging
3 establishments and public food service establishments;
4 amending s. 509.032, F.S.; deleting the restriction
5 preventing local laws, ordinances, or regulations from
6 regulating the use of vacation rentals based solely on
7 their classification, use, or occupancy; providing an
8 effective date.

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

11
12 Section 1. Subsection (7) of section 509.032, Florida
13 Statutes, is amended to read:

14 509.032 Duties.—

15 (7) PREEMPTION AUTHORITY.—

16 ~~(a)~~ The regulation of public lodging establishments and
17 public food service establishments, including, but not limited
18 to, sanitation standards, inspections, training and testing of
19 personnel, and matters related to the nutritional content and
20 marketing of foods offered in such establishments, is preempted
21 to the state. This subsection ~~paragraph~~ does not preempt the
22 authority of a local government or local enforcement district to
23 conduct inspections of public lodging and public food service
24 establishments for compliance with the Florida Building Code and
25 the Florida Fire Prevention Code, pursuant to ss. 553.80 and
26 633.206.

27 ~~(b) A local law, ordinance, or regulation may not restrict~~
28 ~~the use of vacation rentals, prohibit vacation rentals, or~~
29 ~~regulate vacation rentals based solely on their classification,~~

6-00568-14

2014356__

30 ~~use, or occupancy. This paragraph does not apply to any local~~
31 ~~law, ordinance, or regulation adopted on or before June 1, 2011.~~

32 ~~(c) Paragraph (b) does not apply to any local law,~~
33 ~~ordinance, or regulation exclusively relating to property~~
34 ~~valuation as a criterion for vacation rental if the local law,~~
35 ~~ordinance, or regulation is required to be approved by the state~~
36 ~~land planning agency pursuant to an area of critical state~~
37 ~~concern designation.~~

38 Section 2. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/4/14

Meeting Date

Topic SB 356 Public Ledger

Bill Number (if applicable)

Name Cisey Look

Amendment Barcode (if applicable)

Job Title

Address Street

Phone 850-228-8559

City

State

Zip

E-mail

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

Representing Florida League of Cities

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.

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)

2/4/14
Meeting Date

Topic Public Lodging Establishments

Bill Number 356
(if applicable)

Name Chris Lyon

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 315 S. Calhoun St., Suite 830

Phone 850/222-5702

Street
Tallahassee
City

FL 32301
State *Zip*

E-mail clyon@llw-law.com

Speaking: For Against Information

Representing Florida Vacation Rental Managers 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.4.14

Meeting Date

Topic Vacation rentals

Bill Number 356
(if applicable)

Name Rana Brown

Amendment Barcode _____
(if applicable)

Job Title Consultant

Address 18857 NE 29 Ave

Phone 305 935 1866

Street
Aventura FL 33180
City State Zip

E-mail RANA@REBOSRPA.COM

Speaking: For Against Information

Representing City of Aventura, Hallandale Beach, Fort Lauderdale

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/14
Meeting Date

Topic Vacation Rentals

Bill Number 356
(if applicable)

Name Doug Bell

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. Monroe St.

Phone 222-3533

Street

Tell

City

FL

State

Zip

E-mail _____

Speaking: For Against Information

Representing City of Palm Coast

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)

4 Feb 14

Meeting Date

Topic SB 356

Bill Number SB 356
(if applicable)

Name Lester Abberger

Amendment Barcode _____
(if applicable)

Job Title _____

Address Box 1168

Phone 850/524 2779

Street

Tallahassee FL 32302

E-mail lshabberger@netbells.com

City

State

Zip

Speaking: For Against Information

Representing Florida League of Cities

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:
Rules, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Community Affairs
Ethics and Elections
Gaming
Judiciary
Regulated Industries

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR JOHN THRASHER
6th District

January 9, 2014



MEMORANDUM

To: Senator Wilton Simpson, Chairman
Senate Committee on Community Affairs

Fm: Senator John Thrasher

Re: Senate Bill 356 relating to Regulation of Public Lodging Establishments

It will be appreciated if you will agenda my Senate Bill 356 for a hearing by the Senate Committee on Community Affairs at your earliest convenience.

Thank you for your consideration of this request.

REPLY TO:

- 113 Nature Walk Parkway, Suite 106, St. Augustine, Florida 32092 (904) 287-4222 FAX: 1-888-263-3475
- 400 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: 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 Community Affairs

BILL: CS/SB 220

INTRODUCER: Community Affairs Committee; and Senator Thompson and others

SUBJECT: Florida Civil Rights Act

DATE: February 4, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>Hrdlicka</u>	<u>CM</u>	Favorable
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 220 amends the Florida Civil Rights Act (FCRA) by expressly prohibiting discrimination because of pregnancy. The FCRA currently prohibits discrimination based on race, creed, color, sex, physical disability, or national origin in the areas of education, employment, housing, and public accommodation. Courts are split regarding whether a cause of action may exist for pregnancy discrimination under state law.

Existing law prohibits an employer from discriminating against a member of a protected class with respect to compensation, terms, conditions, or privileges of employment. The bill adds the term “benefits” to this list. However, discrimination with respect to benefits may already be covered by the inclusion of “terms” or “conditions of employment” on the list.

By ensuring a state cause of action for pregnancy discrimination claims, plaintiffs will have more time to file suit than under federal law. After the Equal Employment Opportunity Commission concludes an investigation of a complaint and issues a “right-to-sue” letter, the plaintiff has 90 days to file an action in federal court. Plaintiffs bringing pregnancy discrimination cases in state court would have up to a year to file after a determination of reasonable cause by the Florida Commission on Human Relations (FCHR). Also, plaintiffs filing against a small-sized employer may be able to recoup greater punitive damages in state court, due to the difference in caps on punitive damages in state and federal court.

As stated above, case law indicates a conflict among circuits on whether a plaintiff may bring a state claim for pregnancy discrimination under the FCRA. The Florida Supreme Court recently heard oral arguments on the issue. The Court's forthcoming decision will likely determine whether the cause of action exists under Florida law.

II. Present Situation:

Title VII of the Civil Rights Act of 1964¹

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination based on race, color, religion, national origin, or sex. Title VII applies to employers with 15 or more employees and outlines a number of unlawful employment practices. Title VII makes it unlawful for employers to refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, based on race, color, religion, national origin, or sex.²

Pregnancy Discrimination Act³

In 1976, the United States Supreme Court ruled in *General Electric Co. v. Gilbert* that Title VII did not provide protection based on pregnancy discrimination.⁴ In response, in 1978, Congress passed the Pregnancy Discrimination Act (PDA). The PDA amended Title VII to expressly provide that discrimination because of sex includes discrimination against a woman due to pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.⁵

Americans with Disabilities Act⁶

The Americans with Disabilities Act (ADA) prohibits discrimination based on disability in employment, public accommodation, and telecommunications. The ADA defines disability as a "physical or mental impairment that substantially limits one or more major life activities...; a record of such an impairment; or... being regarded as having such an impairment."⁷ Although pregnancy is not generally considered a disability, complications arising out of pregnancy may afford an individual protections provided under the ADA.⁸

Family and Medical Leave Act⁹

The Family and Medical Leave Act (FMLA) provides that employees of certain covered employers are entitled to take up to 12 weeks of unpaid leave a year for a serious illness, injury,

¹ 42 U.S.C. 2000e et. seq.

² 42 U.S.C. 2000e-2.

³ Pub. L. No. 95-555, 92 Stat. 2076.

⁴ 429 U.S. 125, 145-146 (1976).

⁵ The PDA provides that individuals qualifying for protection on the basis of pregnancy must be treated the same for employment purposes, including the receipt of benefits, as any other person who does not have that condition but is similarly able or unable to work.

⁶ 42 U.S.C. s. 101.

⁷ 42 U.S.C. s. 12102.

⁸ Michael E. Barnsback, *Complying with Employment Regulations*, 2013 WL 418827, p. 9 (2013).

⁹ 29 U.S.C. s. 2611 (11)(1993).

or other health condition that involves continuing treatment by a health care provider. The FMLA also guarantees that employees can return to the same or an equivalent position. To apply, the FMLA sets certain threshold requirements regarding a minimum number of employees and time worked in that position.¹⁰ In addition to providing coverage for birth or adoption, the FMLA authorizes leave for prenatal care, incapacity related to pregnancy, and any serious health condition following childbirth.¹¹

Florida Civil Rights Act

The 1992 Florida Legislature enacted the Florida Civil Rights Act to protect persons from discrimination in education, employment, housing, and public accommodations. In addition to the classes of race, color, religion, sex, and national origin protected in federal law, the FCRA includes age, handicap, and marital status as protected classes.¹²

Similar to Title VII, the FCRA specifically provides a number of actions that, if undertaken by an employer, are considered unlawful employment practices.¹³ Unlike Title VII, the FCRA has not been amended to expressly prohibit pregnancy discrimination.

Courts interpreting the FCRA typically follow federal precedent because the FCRA is generally patterned after Title VII. Still, differences between state and federal law persist. As noted above, the FCRA includes age, handicap, and marital status as protected categories. Although Title VII does not include these statuses, other federal laws address age and disability, albeit in a different manner.¹⁴

Pregnancy Discrimination in Florida

Although Title VII expressly includes pregnancy status as a form of sex discrimination, the FCRA does not. The fact that the FCRA is modeled after Title VII but failed to include this provision has caused division among both federal and state courts as to whether the Legislature intended to provide protection on the basis of pregnancy status. Without guidance from the Florida Supreme Court, the ability to bring a claim based on pregnancy discrimination varies among jurisdictions.

The case of *O'Loughlin v. Pinchback* was the first time that a Florida district court of appeal reviewed a claim of pregnancy discrimination in the context of the FCRA (then known as the Florida Human Rights Act).¹⁵ In this case, the plaintiff alleged that her employer unlawfully terminated her from her position as a correctional officer based on her pregnancy. The First District Court of Appeal indicated as an initial matter that Florida styled its anti-discrimination

¹⁰ The FMLA applies to private employers with at least 50 employees and all public employers. To be eligible for FMLA leave, an individual must have worked for the employer for at least 12 months and must have worked at least 1,250 hours during the 12 months prior to the leave.

¹¹ For more information, see U.S. Dept. of Labor, *FMLA Frequently Asked Questions*, <http://www.dol.gov/whd/fmla/fmla-faqs.htm> (last visited January 7, 2014).

¹² Section 760.10(1)(a), F.S.

¹³ Section 760.10(2) through (8), F.S.

¹⁴ Kendra D. Presswood, *Interpreting the Florida Civil Rights Act of 1992*, 87 FLA. B.J. 36, 36 (December 2013).

¹⁵ 579 So.2d 788 (Fla. 1st DCA 1991). This case was brought under the Florida Human Rights Act of 1977, which was the predecessor to the Florida Civil Rights Act of 1992, and was also patterned after Title VII.

law on the federal model.¹⁶ Although the Legislature did not amend Florida law to conform to Title VII as amended by the Pregnancy Discrimination Act, the court held that both federal and state law should be read in concert to provide the maximum protection against discrimination. Therefore, Title VII as amended by the PDA preempts Florida law “to the extent that Florida’s law offers less protection to its citizens than does the corresponding federal law.”¹⁷ Therefore, the *O’Loughlin* court found that pregnancy discrimination is prohibited by state law.

Other courts have interpreted the issue of pregnancy discrimination in state law differently. In *Carsillo v. City of Lake Worth*, the Fourth District Court of Appeal opined that the FCRA includes pregnancy because Congress originally intended Title VII to include pregnancy, and the PDA merely clarified that intent.¹⁸ The court concluded it was unnecessary for Florida to amend its statute in light of this interpretation. The Florida Supreme Court declined to hear the appeal.¹⁹

However, the Third District Court of Appeal court reached an opposite finding. In *Delva v. Continental Group, Inc.*, the court did not look beyond the plain language of the FCRA, and found that no remedy exists for a pregnancy claim in state court under Florida law.²⁰ The court certified the conflict with *Carsillo* to the Florida Supreme Court. The Court held oral arguments on November 7, 2013.²¹ To date, the Court has not released a decision.

Federal courts interpreting the FCRA have similarly wrestled with whether pregnancy status is prohibited by its provisions.²² Like the state courts, the federal courts finding that the FCRA does provide a cause of action based on pregnancy discrimination did so because the FCRA is patterned after Title VII, which bars pregnancy discrimination. The courts finding that the FCRA does not prohibit pregnancy discrimination did so primarily because the Legislature has not amended the FCRA to expressly include pregnancy as a protected class.

Procedure for Filing Claims of Discrimination

A Florida employee may file a charge of an unlawful employment practice with either the federal Equal Employment Opportunities Commission (EEOC) or the Florida Commission on Human Relations.

¹⁶ *Id.* at 791.

¹⁷ *Id.* at 792.

¹⁸ *Carsillo v. City of Lake Worth*, 995 So.2d 1118, 1121 (Fla. 4th DCA 2008).

¹⁹ 20 So.3d 848 (Fla. 2009).

²⁰ *Delva v. Continental Group, Inc.*, 96 So.3d 956, 958 (Fla. 3d DCA 2012), *reh’g denied*.

²¹ Appellants filed *Delva v. Continental Group, Inc.*, with the Florida Supreme Court on October 16, 2012. The Court assigned *Delva* case number SC12-2315.

²² Federal courts finding that the FCRA does not include a prohibition against pregnancy discrimination include: *Frazier v. T-Mobile USA, Inc.*, 495 F.Supp.2d 1185, 1187 (M.D. Fla. 2003), *Boone v. Total Renal Laboratories, Inc.*, 565 F.Supp.2d 1323, 1327 (M.D. Fla. 2008), and *DuChateau v. Camp Dresser & McKee, Inc.*, 822 F.Supp.2d 1325, 1336 (S.D. Fla. 2011). Federal courts finding FCRA protects against pregnancy discrimination include *Jolley v. Phillips Educ. Grp. of Cent. Fla., Inc.*, 1996 WL 529202, p. 6 (M.D. Fla. 1996), *Terry v. Real Talent, Inc.*, 2009 WL 3494476, p. 2 (M.D. Fla. 2009), *Constable v. Agilysys, Inc.*, 2011 WL 2446605, p. 6 (M.D. Fla. 2011), and *Glass v. Captain Katanna’s, Inc.*, 2013 WL 3017010, p. 8 (M.D. Fla. 2013).

For a charge filed with the EEOC, the EEOC must investigate and make a reasonable cause determination within 120 days after the date of the filing.²³ If the EEOC finds an absence of reasonable cause, the EEOC will dismiss the charge. If the EEOC finds reasonable cause, the EEOC must engage in informal conferencing, conciliation, and persuasion to remedy the unlawful employment practice.²⁴

For a charge filed with the FCHR, the FCHR must make a reasonable cause determination within 180 days after the filing of the complaint.²⁵ If the FCHR finds reasonable cause, the plaintiff may bring either a civil action or request an administrative hearing.²⁶

After the EEOC concludes its investigation and issues a “right-to-sue” letter to the plaintiff, the plaintiff must file a claim in federal court under Title VII within 90 days of receipt of the letter.²⁷

A plaintiff is required to file a state claim in civil court under the Florida Civil Rights Act within one year of the determination of reasonable cause by the FCHR.²⁸

Remedies

Both state and federal law authorize awards of back pay, compensatory damages, and punitive damages.²⁹

In federal court, punitive damages vary depending on the size of the employer. In cases that qualify for punitive damages, the sum of both compensatory and punitive damages is capped at:

- \$50,000 for an employer that has 15 to 100 employees in at least 20 calendar weeks in the current or preceding calendar year;
- \$100,000 for an employer that has between 101 and 200 employees;
- \$200,000 for an employer that has between 201 and 500 employees; and
- \$300,000 for an employer that has more than 500 employees.

In state court, punitive damages are capped at \$100,000 regardless of the size of the employer.³⁰

EEOC and FCHR Workshare Agreement

The EEOC and the FCHR are working together pursuant to a worksharing agreement (Agreement), the purpose of which is to effectuate Title VII, in addition to other specified federal laws.³¹ The Agreement requires the FCHR to “take all charges alleging a violation of Title VII”

²³ 42 U.S.C. s. 2000e-5(b).

²⁴ *Id.*

²⁵ Section 760.11(3), F.S.

²⁶ Section 760.11(4), F.S.

²⁷ 42 U.S.C. s. 2000e-5(f)(1).

²⁸ Section 760.11(5), F.S.; 42 U.S.C. s. 2000e-5(g)(1) and s. 1981a.

²⁹ *Id.*

³⁰ *Id.*

³¹ Florida Commission on Human Relations and Equal Employment Opportunity Commission, *FY 2011 EEOC/FEPA Model Worksharing Agreement*, as extended through FY 2013 (on file with the Senate Judiciary Committee).

where both the EEOC and the FCHR have mutual jurisdiction, or where only the EEOC has jurisdiction.³² To continue the agreement, the FCHR is required to annually represent in writing that “there have been no substantive changes in the processes, procedures, statutes, policies or regulations that would adversely affect or substantially alter the worksharing arrangement...”

III. Effect of Proposed Changes:

This bill adds the condition of pregnancy as a protected class under the Florida Civil Rights Act of 1992.

Pregnancy is afforded the same protection as other statuses or classes identified in the FCRA. A woman affected by pregnancy may not be discriminated against:

- by public lodging and food service establishments;
- with respect to education, housing, or public accommodation; or
- with respect to employment, provided that any discriminatory act constitutes an unlawful employment practice.³³

In addition to compensation, terms, conditions, or privileges of employment, the bill adds discrimination with respect to “benefits” to the list of “unlawful employment practices” specified in existing law. The extent to which the bill prohibits conduct not already prohibited under existing law is not clear.

By ensuring a state cause of action for pregnancy discrimination claims, plaintiffs will have more time to file suit. As described in the Present Situation section, after receiving a “right-to-sue” letter from the federal Equal Employment Opportunity Commission, a plaintiff must file a case in federal court within 90 days. A plaintiff has up to one year to file a civil action in state court after the FCHR issues its reasonable cause determination.

Additionally, a state cause of action in some cases will allow for greater remedies than the remedies authorized by federal law. Under federal law, the sum of compensatory and punitive damages against an employer having between 15 and 100 employees may not exceed \$50,000. Under a state claim, punitive damages may reach \$100,000, regardless of the size of the employer. However, federal law authorizes the sum of compensatory and punitive damages of up to \$300,000 for discrimination by larger employers.

The bill takes effect July 1, 2014.

³² *Id.* at 2.

³³ Unlawful employment practices include discharging or failing to or refusing to hire a person, or discriminating in compensation, benefits, terms, conditions, or privileges of employment; and limiting or classifying an employee or applicant in such a way as to deprive the person of employment opportunities (ss. 760.10(1) and (2), F.S.) The prohibition on unlawful employment practices applies also to employment agencies and labor organizations. (ss. 760.10 (3) and (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:

This bill will ensure plaintiffs have access to state court to pursue pregnancy discrimination claims.

C. Government Sector Impact:

State and local governments are currently required to comply with Title VII as amended by the Pregnancy Discrimination Act of 1978. The PDA has been interpreted by the state and local governments as prohibiting discrimination on the basis of pregnancy, childbirth, or related medical conditions. Therefore, complying with this bill will not create any additional burdens for state or local governments.

The Florida Commission on Human Relations manages complaints of discrimination brought under Title VII in Florida. According to the analysis conducted by the FCHR, passage of this bill will not result in any additional fiscal or workload burden on the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

If the Florida Supreme Court upholds the *Delva v. Continental Group, Inc.*³⁴ holding and this bill does not become law, plaintiffs in pregnancy discrimination cases will be limited to redress in federal court. Any prohibition on the ability of the Florida Commission on Human Relations to

³⁴ 96 So.3d 956 (Fla. 3d DCA 2012).

continue to process pregnancy discrimination claims may take the FCHR out of conformity with the worksharing agreement. If so, federal funding for the FCHR may potentially be jeopardized.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 509.092, 760.01, 760.05, 760.07, 760.08, and 760.10.

This bill reenacts section 760.11(1), Florida Statutes, for the purpose of incorporating the amendments made to section 760.10, Florida Statutes.

IX. Additional Information:

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

CS by Community Affairs on February 4, 2014:

Deletes the definition of “pregnancy.”

- B. **Amendments:**

None.



287544

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2014	.	
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The Committee on Community Affairs (Thompson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 58 - 64.

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

And the title is amended as follows:

Delete lines 7 - 8

and insert:

Rights Act of 1992;

By Senator Thompson

12-00174A-14

2014220__

1 A bill to be entitled
2 An act relating to the Florida Civil Rights Act;
3 amending s. 509.092, F.S.; prohibiting discrimination
4 on the basis of pregnancy in public lodging and food
5 service establishments; amending s. 760.01, F.S.;
6 revising the general purpose of the Florida Civil
7 Rights Act of 1992; amending s. 760.02, F.S.;
8 providing a definition for the term "pregnancy";
9 amending s. 760.05, F.S.; revising the function of the
10 Florida Commission on Human Relations; amending s.
11 760.07, F.S.; providing civil and administrative
12 remedies for discrimination on the basis of pregnancy;
13 amending s. 760.08, F.S.; prohibiting discrimination
14 on the basis of pregnancy in places of public
15 accommodation; amending s. 760.10, F.S.; prohibiting
16 discrimination with regard to employment benefits;
17 prohibiting employment discrimination on the basis of
18 pregnancy; prohibiting discrimination on the basis of
19 pregnancy by labor organizations, joint labor-
20 management committees, and employment agencies;
21 prohibiting discrimination on the basis of pregnancy
22 in occupational licensing, certification, and
23 membership organizations; providing an exception to
24 unlawful employment practices based on pregnancy;
25 reenacting s. 760.11(1), F.S., relating to
26 administrative and civil remedies for violations of
27 the Florida Civil Rights Act of 1992, to incorporate
28 the amendments made to s. 760.10(5), F.S., in a
29 reference thereto; providing an effective date.

12-00174A-14

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

Section 1. Section 509.092, Florida Statutes, is amended to read:

509.092 Public lodging establishments and public food service establishments; rights as private enterprises.—Public lodging establishments and public food service establishments are private enterprises, and the operator has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator, but such refusal may not be based upon race, creed, color, sex, pregnancy, physical disability, or national origin. A person aggrieved by a violation of this section or a violation of a rule adopted under this section has a right of action pursuant to s. 760.11.

Section 2. Subsection (2) of section 760.01, Florida Statutes, is amended to read:

760.01 Purposes; construction; title.—

(2) The general purposes of the Florida Civil Rights Act of 1992 are to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.

Section 3. Subsection (12) is added to section 760.02,

12-00174A-14

2014220__

59 Florida Statutes, to read:

60 760.02 Definitions.—For the purposes of ss. 760.01-760.11
61 and 509.092, the term:

62 (12) "Pregnancy" means a woman affected by pregnancy,
63 childbirth, or a medical condition related to pregnancy or
64 childbirth.

65 Section 4. Section 760.05, Florida Statutes, is amended to
66 read:

67 760.05 Functions of the commission.—The commission shall
68 promote and encourage fair treatment and equal opportunity for
69 all persons regardless of race, color, religion, sex, pregnancy,
70 national origin, age, handicap, or marital status and mutual
71 understanding and respect among all members of all economic,
72 social, racial, religious, and ethnic groups; and shall endeavor
73 to eliminate discrimination against, and antagonism between,
74 religious, racial, and ethnic groups and their members.

75 Section 5. Section 760.07, Florida Statutes, is amended to
76 read:

77 760.07 Remedies for unlawful discrimination.—Any violation
78 of any Florida statute making unlawful discrimination because of
79 race, color, religion, gender, pregnancy, national origin, age,
80 handicap, or marital status in the areas of education,
81 employment, housing, or public accommodations gives rise to a
82 cause of action for all relief and damages described in s.
83 760.11(5), unless greater damages are expressly provided for. If
84 the statute prohibiting unlawful discrimination provides an
85 administrative remedy, the action for equitable relief and
86 damages provided for in this section may be initiated only after
87 the plaintiff has exhausted his or her administrative remedy.

12-00174A-14

2014220__

88 The term "public accommodations" does not include lodge halls or
89 other similar facilities of private organizations which are made
90 available for public use occasionally or periodically. The right
91 to trial by jury is preserved in any case in which the plaintiff
92 is seeking actual or punitive damages.

93 Section 6. Section 760.08, Florida Statutes, is amended to
94 read:

95 760.08 Discrimination in places of public accommodation.—

96 All persons are ~~shall be~~ entitled to the full and equal
97 enjoyment of the goods, services, facilities, privileges,
98 advantages, and accommodations of any place of public
99 accommodation, ~~as defined in this chapter,~~ without
100 discrimination or segregation on the ground of race, color,
101 national origin, sex, pregnancy, handicap, familial status, or
102 religion.

103 Section 7. Subsections (1) and (2), paragraphs (a) and (b)
104 of subsection (3), subsections (4) through (6), and paragraph
105 (a) of subsection (8) of section 760.10, Florida Statutes, are
106 amended to read:

107 760.10 Unlawful employment practices.—

108 (1) It is an unlawful employment practice for an employer:

109 (a) To discharge or to fail or refuse to hire any
110 individual, or otherwise to discriminate against any individual
111 with respect to compensation, benefits, terms, conditions, or
112 privileges of employment, because of such individual's race,
113 color, religion, sex, pregnancy, national origin, age, handicap,
114 or marital status.

115 (b) To limit, segregate, or classify employees or
116 applicants for employment in any way which would deprive or tend

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117 to deprive any individual of employment opportunities, or
118 adversely affect any individual's status as an employee, because
119 of such individual's race, color, religion, sex, pregnancy,
120 national origin, age, handicap, or marital status.

121 (2) It is an unlawful employment practice for an employment
122 agency to fail or refuse to refer for employment, or otherwise
123 to discriminate against, any individual because of race, color,
124 religion, sex, pregnancy, national origin, age, handicap, or
125 marital status or to classify or refer for employment any
126 individual on the basis of race, color, religion, sex,
127 pregnancy, national origin, age, handicap, or marital status.

128 (3) It is an unlawful employment practice for a labor
129 organization:

130 (a) To exclude or to expel from its membership, or
131 otherwise to discriminate against, any individual because of
132 race, color, religion, sex, pregnancy, national origin, age,
133 handicap, or marital status.

134 (b) To limit, segregate, or classify its membership or
135 applicants for membership, or to classify or fail or refuse to
136 refer for employment any individual, in any way which would
137 deprive or tend to deprive any individual of employment
138 opportunities, or adversely affect any individual's status as an
139 employee or as an applicant for employment, because of such
140 individual's race, color, religion, sex, pregnancy, national
141 origin, age, handicap, or marital status.

142 (4) It is an unlawful employment practice for any employer,
143 labor organization, or joint labor-management committee
144 controlling apprenticeship or other training or retraining,
145 including on-the-job training programs, to discriminate against

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146 any individual because of race, color, religion, sex, pregnancy,
147 national origin, age, handicap, or marital status in admission
148 to, or employment in, any program established to provide
149 apprenticeship or other training.

150 (5) Whenever, in order to engage in a profession,
151 occupation, or trade, it is required that a person receive a
152 license, certification, or other credential, become a member or
153 an associate of any club, association, or other organization, or
154 pass any examination, it is an unlawful employment practice for
155 any person to discriminate against any other person seeking such
156 license, certification, or other credential, seeking to become a
157 member or associate of such club, association, or other
158 organization, or seeking to take or pass such examination,
159 because of such other person's race, color, religion, sex,
160 pregnancy, national origin, age, handicap, or marital status.

161 (6) It is an unlawful employment practice for an employer,
162 labor organization, employment agency, or joint labor-management
163 committee to print, or cause to be printed or published, any
164 notice or advertisement relating to employment, membership,
165 classification, referral for employment, or apprenticeship or
166 other training, indicating any preference, limitation,
167 specification, or discrimination, based on race, color,
168 religion, sex, pregnancy, national origin, age, absence of
169 handicap, or marital status.

170 (8) Notwithstanding any other provision of this section, it
171 is not an unlawful employment practice under ss. 760.01-760.10
172 for an employer, employment agency, labor organization, or joint
173 labor-management committee to:

174 (a) Take or fail to take any action on the basis of

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175 religion, sex, pregnancy, national origin, age, handicap, or
176 marital status in those certain instances in which religion,
177 sex, condition of pregnancy, national origin, age, absence of a
178 particular handicap, or marital status is a bona fide
179 occupational qualification reasonably necessary for the
180 performance of the particular employment to which such action or
181 inaction is related.

182 Section 8. For the purpose of incorporating the amendment
183 made by this act to section 760.10(5), Florida Statutes, in a
184 reference thereto, subsection (1) of section 760.11, Florida
185 Statutes, is reenacted to read:

186 760.11 Administrative and civil remedies; construction.—

187 (1) Any person aggrieved by a violation of ss. 760.01-
188 760.10 may file a complaint with the commission within 365 days
189 of the alleged violation, naming the employer, employment
190 agency, labor organization, or joint labor-management committee,
191 or, in the case of an alleged violation of s. 760.10(5), the
192 person responsible for the violation and describing the
193 violation. Any person aggrieved by a violation of s. 509.092 may
194 file a complaint with the commission within 365 days of the
195 alleged violation naming the person responsible for the
196 violation and describing the violation. The commission, a
197 commissioner, or the Attorney General may in like manner file
198 such a complaint. On the same day the complaint is filed with
199 the commission, the commission shall clearly stamp on the face
200 of the complaint the date the complaint was filed with the
201 commission. In lieu of filing the complaint with the commission,
202 a complaint under this section may be filed with the federal
203 Equal Employment Opportunity Commission or with any unit of

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204 government of the state which is a fair-employment-practice
205 agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the
206 complaint is filed is clearly stamped on the face of the
207 complaint, that date is the date of filing. The date the
208 complaint is filed with the commission for purposes of this
209 section is the earliest date of filing with the Equal Employment
210 Opportunity Commission, the fair-employment-practice agency, or
211 the commission. The complaint shall contain a short and plain
212 statement of the facts describing the violation and the relief
213 sought. The commission may require additional information to be
214 in the complaint. The commission, within 5 days of the complaint
215 being filed, shall by registered mail send a copy of the
216 complaint to the person who allegedly committed the violation.
217 The person who allegedly committed the violation may file an
218 answer to the complaint within 25 days of the date the complaint
219 was filed with the commission. Any answer filed shall be mailed
220 to the aggrieved person by the person filing the answer. Both
221 the complaint and the answer shall be verified.

222 Section 9. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/14
Meeting Date

Topic Florida Civil Rights Act

Bill Number SB 220
(if applicable)

Name Cheyenne Costilla

Amendment Barcode _____
(if applicable)

Job Title General Counsl FCHR

Address 2009 Apalachee Pkwy.
Street

Phone 488-7082

Tallahassee FL 32301
City State Zip

E-mail cheyanne.costilla@fchr.
myflorida.com

Speaking: For Against Information

Representing FCHR

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)

2-4-14
Meeting Date

Topic Pregnancy discrimination

Bill Number SB 220
(if applicable)

Name Stephanie Kunkel

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1143 Albritton Dr
Street
Tallahassee FL 32301
City State Zip

Phone 850-320-4208

E-mail stef.kunkel@gmail.com

Speaking: For Against Information

Representing Business and Professional Women, INC.

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-4-14

Meeting Date

Topic

Fl Civil Rights Act

Bill Number

SB 220

(if applicable)

Name

Barbara Devane

Amendment Barcode

(if applicable)

Job Title

Address

625 E. Brevard St

Phone

850-222-3969

Street

Tallahassee FL 32308

E-mail

barbaradevane1@yahoo.com

City

State

Zip

Speaking:

For

Against

Information

Representing

FL NOW

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/14
Meeting Date

Topic Pregnancy Discrimination

Bill Number 220
(if applicable)

Name Bill Herde

Amendment Barcode _____
(if applicable)

Job Title Executive Director / Florida

Address 110 E. Jefferson St.
Street

Phone 850-681-0416

Tallahassee FL 32301
City State Zip

E-mail Bill.Herde@nfib.org

Speaking: For Against Information

Representing National Federation of Independent Business

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/14
Meeting Date

Topic SB 220 Bill Number SB 220
(if applicable)

Name Amber Washington Amendment Barcode _____
(if applicable)

Job Title Legislative Intern - League of Women Voters Florida

Address 540 Beverly Court Phone _____
Street
Tallahassee FL 32301
City State Zip
E-mail lwvfo@outreachd@gmail.com

Speaking: For Against Information

Representing League of Women Voters 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/14
Meeting Date

Topic The Civil Rights Act

Bill Number SB220
(if applicable)

Name Beth Swickard

Amendment Barcode _____
(if applicable)

Job Title Legislative Director

Address 2300 N. Florida Mango Road

Phone 561-472-9934

West Palm Beach, FL 33409
City State Zip

E-mail beth.swickard@ppsoftl.org

Speaking: For Against Information

Representing Florida Alliance of Planned Parenthood Affiliates

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/04/2014
Meeting Date

Topic Florida Civil Rights Act

Bill Number 220
(if applicable)

Name Michelle Wilson

Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address 2009 Apalachee Pkwy Suite # 100
Street
Tallahassee FL 32301
City State Zip

Phone (850) 488-7082

E-mail michelle.wilson@fchs
myflorida.com

Speaking: For Against Information

Representing Florida Commission on Human Relations

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GERALDINE F. THOMPSON
12th District

COMMITTEES:

Appropriations Subcommittee on General
Government, *Vice Chair*
Community Affairs, *Vice Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Children, Families, and Elder Affairs
Commerce and Tourism
Transportation

JOINT COMMITTEE:

Joint Administrative Procedures Committee

January 23, 2014

The Honorable Wilton Simpson
322 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Simpson:

I respectfully request SB 220—*Florida Civil Rights Act* be placed on the agenda of the Committee on Community Affairs as soon as possible.

This bill will give pregnant women victimized by discrimination in the workplace protection under the Florida Civil Rights Act.

Over the years, most federal and state courts have held that Florida's Civil Rights Act does not protect pregnant women against discrimination by an employer. Most recently, such a ruling was made by the 3rd District Court of Appeals which noted Florida's failure to amend its human rights law to prohibit pregnancy-based discrimination.

Filed at the request of the Florida Commission on Human Relations, the legislation will have no fiscal impact to the state or private sector.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Geraldine F. Thompson".

Senator Geraldine Thompson, District 12
GT:dr

cc: Tom Yeatman

REPLY TO:

- 511 W. South Street, Suite 204, Orlando, Florida 32805
- 224 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: 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 Community Affairs

BILL: CS/CS/SB 272

INTRODUCER: Community Affairs Committee; Communications, Energy, and Public Utilities Committee; and Senator Simpson

SUBJECT: Water and Wastewater Utilities

DATE: February 4, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Caldwell</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 272 creates a process whereby customers may petition the Florida Public Service Commission (FPSC, PSC, or commission) to require compliance with secondary water quality standards. If a utility fails to comply with commission orders, the process described by this bill could result in probation or revocation of the utility's certificate of authority. The bill provides petition criteria and factors the commission must consider in its review of the petition and the action it may take to dispose of the petition.

The bill adds secondary water standards to the criteria the FPSC must consider when setting rates for water or wastewater service. The bill provides guidelines for the secondary water standards. The bill authorizes the commission to deny all or part of a rate increase for a utility's system or part of a system if it determines that the quality of water or wastewater service is less than satisfactory. The bill requires a utility to provide an estimate of the costs and benefits of plausible solutions for each concern that the commission finds, meet with the customers to discuss the costs and solutions, and to periodically report on the progress of implementation. The commission may require the utility to resolve certain problems and require benchmarks and periodic progress reporting. The bill authorizes the commission to adopt rules to assess and enforce compliance with the secondary water standards and prescribe penalties for a utility's failure to adequately address each concern.

II. Present Situation:

Regulatory Compact

Utilities subject to economic regulation have what is called a “regulatory compact” with their customers and the regulators, which is a method of balancing rights and obligations of a utility and its ratepayers. The regulatory compact has been described as follows:

The utility business represents a compact of sorts; a monopoly on service in a particular geographic area (coupled with state-conferred rights of eminent domain or condemnation) is granted the utility in exchange for a regime of intensive regulation, including price regulation, quite alien to the free market. . . . Each party to the compact gets something in the bargain. As a general rule, utility investors are provided a level of stability in earnings and value less likely to be attained in the unregulated or moderately regulated sector; in turn, ratepayers are afforded universal, non-discriminatory service and protection from monopoly profits through political control over an economic enterprise.¹

Public Service Commission jurisdiction over water and wastewater utilities

Chapter 367, F.S., is the Water and Wastewater System Regulatory Law. Section 367.011, F.S., grants the commission exclusive jurisdiction over each utility with respect to its authority, service, and rates. It also declares the regulation of utilities to be in the public interest, and the chapter to be an exercise of the police power of the state for the protection of the public health, safety, and welfare.

Despite this broad grant of authority, the PSC does not have authority over all water and wastewater utilities. Section 367.022(2), F.S., exempts from PSC regulation or application of this chapter those water or wastewater systems owned, operated, managed, or controlled by governmental authorities,² including water or wastewater facilities operated by private firms under water or wastewater facility privatization contracts.

Section 367.171, F.S., provides that, after 10 continuous years under the jurisdiction of the commission, a county can opt-out of commission jurisdiction by resolution or ordinance. In such a case, the county regulates the rates of all utilities in that county. However, the commission has exclusive jurisdiction over all utility systems whose services transverse county boundaries, whether the counties involved are jurisdictional or nonjurisdictional. The commission does not have jurisdiction over utility systems that are subject to, and remain subject to, interlocal utility agreements in effect as of January 1, 1991, that create a single governmental authority to regulate the utility systems whose service transverses county boundaries. According to the PSC webpage, the commission has jurisdiction over 143 investor-owned utilities in 37 counties that serve

¹ Tomain and Cudahy, *Energy Law*, 121-122 (quoting *Jersey Cent. Power and Light Co. v. F.E.R.C.*, 810 F.2d 1168 (D.C. Cir. 1987)).

² In this context, the term “governmental authority” means a political subdivision, a regional water supply authority, or a nonprofit corporation formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility. See Section 367.021(7), F.S.

120,567 water and 74,317 wastewater customers³ and counties have jurisdiction in 30 counties, as listed in the following table.⁴

Jurisdictional Counties (37)	Non-Jurisdictional Counties (30)
Alachua	Baker
Bradford	Bay
Brevard	Calhoun
Broward	Citrus
Charlotte	Collier
Clay	Columbia
Duval	Dade
Escambia	Desoto
Franklin	Dixie
Gadsden	Flagler
Gulf	Gilchrist
Hardee	Glades
Highlands	Hamilton
Jackson	Hendry
Lake	Hernando
Lee	Hillsborough
Levy	Holmes
Manatee	Indian River
Marion	Jefferson
Martin	Lafayette
Monroe	Leon
Nassau	Liberty
Okaloosa	Madison
Okeechobee	Santa Rosa
Orange	Santa Rosa
Osceola	Suwanee
Palm Beach	Taylor
Pasco	Union
Pinellas	Wakulla
Polk	Walton
Putnam	
Seminole	
St. Johns	
St. Lucie	
Sumter	
Volusia	
Washington	

³ Florida Public Service Commission, *Facts and Figures of the Florida Utility Industry* (April 2013), at 29-33, <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2013.pdf> (last visited Jan. 31, 2014).

⁴FPSC, *Jurisdictional and Non-Jurisdictional Counties*, <http://www.psc.state.fl.us/utilities/waterwastewater/wawtextchart.pdf> (last visited Jan. 31, 2014).

Public Service Commission rate-making and water quality

Pursuant to s. 367.081, F.S., the PSC establishes rates which are just, reasonable, compensatory, and not unfairly discriminatory. In doing so, the commission must consider the value and quality of the service and the cost of providing the service, which includes, but is not limited to: debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service.

According to the PSC staff:

The FPSC establishes rates for investor-owned water and wastewater utilities on an individualized, prospective basis. In the rate-setting process, a utility submits investments it believes are appropriate for inclusion into its rate base, and expenses that it considers appropriate for recovery in rates. The role of the FPSC is to determine the extent to which such investments and expenses submitted are reasonable and prudent. Once the PSC determines which items are allowable for the purpose of recovery, rates are established that allow the utility an opportunity to earn a fair rate of return on its investment and to recover all prudently incurred expenses associated with the provision of utility service. The FPSC does not set rates for government-owned utilities.

The FPSC establishes rates for investor-owned water and wastewater utilities pursuant to Chapter 367, Florida Statutes, in those counties that have elected to place utilities under FPSC jurisdiction. The objective of regulation under the statute is to provide safe potable water and wastewater services at fair and reasonable rates. The FPSC sets rates through an evidentiary administrative proceeding, or through a process known as a Staff Assisted Rate Case (SARC). The Commission holds customer service hearings in the investor-owned utility's service area to accept customer testimony as part of the record of the proceeding. The FPSC reviews the utility's costs to determine if they are prudently incurred. The FPSC also reviews the utility's earnings to determine a fair rate of return on investment.

When setting rates, the FPSC takes into account customer concerns and issues with water and wastewater utilities, including the value and the quality of the service. The Commission has the flexibility to adjust rates based on the evidence on record in a rate case. Current law, however, does not give the FPSC specific authority to consider secondary drinking water standards or wastewater standards.⁵

As noted, although the statute requires the commission to consider quality of service in setting rates, the focus is on the quality of the service provided; that is, the focus is primarily on how well the utility provides water, not the quality of the water itself. The quality of the water and

⁵ FPSC, *Senate Bill 272 Agency Analysis* (Nov. 13, 2013).

compliance with secondary water quality standards are recurrent issues at both the PSC and the Legislature.⁶ In 2012, the Legislature created the Study Committee on Investor-Owned Water & Wastewater Utility Systems (Study Committee) and directed it to study a list of issues, including water quality.⁷ The Study Committee recommended amending s. 367.081, F.S., to establish a mechanism within a rate case proceeding to require the PSC to consider the extent to which a utility meets secondary water and wastewater standards.⁸

Penalties

Section 367.161, F.S., provides penalties. If a utility knowingly refuses to comply with or willfully violates any provision of ch. 367, F.S., or any commission rule or order, the utility is subject to a penalty for each such offense of not more than \$5,000, to be fixed, imposed, and collected by the commission. Each day that the refusal or violation continues constitutes a separate offense. Each penalty is a lien upon the real and personal property of the utility, enforceable by the commission as a statutory lien under ch. 85, F.S. The proceeds from the enforcement of a lien are deposited into the General Revenue Fund.

Standards for Secondary Water Quality Characteristics

Secondary water quality characteristics refer to those characteristics of drinking water that typically have no adverse health effects, but instead are generally associated with aesthetic concerns.⁹ The Department of Environmental Protection (DEP) has established maximum allowed levels for 14 criteria of secondary water quality characteristics. Based on EPA mandated standards, the DEP's list of secondary water quality characteristics includes: aluminum, chlorine, copper, fluoride, iron, manganese, silver, sulfate, zinc, color, odor, pH, total dissolved solids, and foaming agents.¹⁰

Water quality monitoring of secondary water quality characteristics by the DEP consists of a three year schedule of sampling of all water systems in the state serving more than 25 people per day.¹¹ Every three years a single sample¹² is taken from a plant or from the connected distribution system, but not from homes.¹³ Violations of the three year test result in quarterly sampling in accordance with a corrective action plan.¹⁴

⁶ Water quality of service problems, for which customers have provided testimony at PSC hearings, include black water, pressure, odor, and customer service. See PSC, Final Order No. PSC-97-0280-FOF-WS (Mar. 12, 1997).

⁷ The Study Committee was created by Chapter 2012-187, s. 2, Laws of Fla. (CS/HB 1389).

⁸ For the text of the recommended statutory change, see Study Committee on Investor-Owned Water & Wastewater Utility Systems, Study Committee Report (Feb. 15, 2013), Attachment IV.9-D, at 115 of 386, *available at* <http://www.psc.state.fl.us/utilities/waterwastewater/Water-Wastewater%20Sub%20Committee%20Report.pdf> (last visited Jan. 31, 2014).

⁹ Secondary drinking water contaminants, if found at considerably high concentrations, may result in health implications in addition to just aesthetic degradation.

¹⁰ DEP, *Secondary Drinking Water Standards*, http://www.dep.state.fl.us/water/drinkingwater/sec_con.htm (last visited Jan. 31, 2014).

¹¹ The schedule of sampling is based on system size. Systems serving large communities are being tested this year, and small communities will be tested next year. Telephone interview with Van Hoofnagle, DEP Division of Water Resource Management (Jan.23, 2014).

¹² A confirmation sample is allowed. *Id.*

¹³ See Rule 62-550.520, F.A.C.

¹⁴ Telephone interview with Van Hoofnagle, DEP Division of Water Resource Management (Jan.23, 2014).

Standards for Wastewater Treatment

There are many different levels of treatment required for domestic wastewater facilities permitted in Florida, depending primarily upon the location where the wastewater is being discharged.¹⁵ At a minimum, the DEP requires all facilities to provide treatment for carbonaceous biochemical oxygen demand, total suspended solids, and basic disinfection. As part of the disinfection requirement, facilities are required to meet certain fecal coliform limitations, pH control, and total residual chlorine limitations.

III. Effect of Proposed Changes:

The bill creates two new sections in the Water and Wastewater Chapter, 367, F.S. Section 1 of the bill establishes a petition process by which 65 percent of water or wastewater utility customers can obtain a revocation hearing on a utility's certificate of authorization. Section 2 provides that when the PSC is setting rates for a water or wastewater utility, it must consider the extent to which the utility provides water service that meets secondary water quality standards.

Section 1 creates s. 367.072, F.S., to allow customers to petition the commission for relief when service and water quality standards are not met by a utility. The bill requires customers to first file a notice of intent with the commission, wait up to 10 days for instructions from the commission, and then collect signatures within 90 days of receiving instructions. The bill requires at least 65 percent of the customers to sign the petition, which must state with specificity the problem the customers have with the water or wastewater service. Customers who sign the petition must be customers currently receiving service from the utility. If customers are served by a master meter, 65 percent of the heads of households served must support the petition. Customers are given one chance to cure an insufficient petition.¹⁶

The commission must review the petition to determine if it complies with the requirements set forth in the section and to provide the utility with a copy. The utility must respond to each problem identified in the petition and explain if it meets federal and state primary standards or secondary standards established in s. 367.0812, F.S. The utility must also give an explanation of its relationship with the customers, including each complaint received, length of time each customer has been complaining, the resolution of each complaint, and the time taken to address each complaint.

The bill authorizes the commission to put in probation, or revoke, a utility's certificate of authority if it finds that the water and wastewater service is not of good quality or does not meet the standards set forth in the section. The commission must evaluate the petition by considering the issues identified, the utility's response, and any other factors the commission deems relevant. Based upon its evaluation, the commission may dismiss the petition, place the utility's certificate on probationary status for up to 3 years¹⁷ while the utility undertakes corrective action, or revoke the utility's certificate, whereby a receiver will be appointed. The commission must adopt rules relating to the requirements for the petition and may adopt other rules to implement the section.

¹⁵ See Chapter 62-600, 610, F.A.C.

¹⁶ If the petition is dismissed for insufficiency, customers would not be allowed to file a subsequent petition for one year.

¹⁷ Extension of the three year timeframe is provided for in the bill for situations out of the utility's control.

Section 2 creates s. 367.0812, F.S., to provide that when the PSC is setting rates for a water or wastewater utility, it must consider the extent to which the utility has met standards for secondary water quality characteristics,¹⁸ or wastewater standards,¹⁹ based in part on findings by DEP that the utility has failed secondary water quality or wastewater service tests. In determining whether a utility has met these standards, the PSC must consider:

- Testimony and evidence provided by customers and the utility;
- The results of past tests required by DEP or a county health department which measure the utility's compliance with the applicable secondary water quality standards, or wastewater standards; and
- Complaints filed by customers with the relevant regulatory authority regarding the applicable secondary water quality standards, or wastewater standards, during the past 5 years.

If the commission determines that a utility has failed to meet these standards, the utility must:

- Estimate the costs and benefits of plausible solutions to each concern identified by the PSC;
- Meet with its customers to discuss these estimated costs and benefits of plausible solutions to each concern identified by the commission; and
- Report the conclusions of such meetings to the commission.

The utility is required to meet with its customers within a time prescribed by the commission to discuss estimated costs and benefits to implement plausible solutions and report to the commission if the customers and the utility agree on a solution for each quality of service issues identified or if the customers and the utility prefer a different solutions to at least one of the quality of service issues identified. The commission may require the utility to implement solutions that are in the best interest of the customers for each issue and establish benchmarks and interim reporting on the progress of implementation. The commission may allow companies to recover its costs for solutions required by the commission.

During a rate case proceeding, customers may not file a petition to revoke a certificate. The bill prohibits a utility from filing a rate case while a revocation docket is open.

The commission is required to adopt rules to assess and enforce a utility's compliance with this section. The rules must prescribe penalties for a utility's failure to adequately address or resolve each concern, which may include fines as provided in s. 367.161, F.S., a reduction of return on equity of up to 100 basis points (one percent), denial of all or part of a rate increase, and cancellation of the certificate of authorization. The DEP is required to establish secondary wastewater service standards.

The bill is based on the modified proposed legislation from the Study Committee on Investor-Owned Water & Wastewater Utility Systems Report discussed above.²⁰

Section 3 provides an effective date of October 1, 2014.

¹⁸ Secondary water quality standards are listed in the bill as taste, odor, color, and corrosiveness.

¹⁹ Wastewater service standards are listed in the bill as odor, noise, aerosol drift, and lighting.

²⁰ Report of the Study Committee on Investor-Owned Water & Wastewater Utility Systems, *supra* note 8, at 105-116.

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:

While the concept of reducing a utility's rate of return on equity (ROE) based on mismanagement is "by no means new to Florida or other jurisdictions,"²¹ PSC staff notes that the denial of all of a rate increase, pursuant to Section 2 of the bill, could be interpreted as confiscatory ratemaking and, therefore, unconstitutional.²² Utilities are entitled to a reasonable rate of return on equity, which may be offset by the commission based on a utility's "overall quality of service and the performance of the management."²³

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

None.

B. Private Sector Impact:

Private water and wastewater utilities that do not satisfactorily address customer complaints regarding secondary water standards might lose their certificate of authority to provide service. Customers may realize an increase in the cost of water and wastewater services if certain services are improved, however, the customer will be fully informed of the costs and benefits and may participate in the decision to incur those costs before increases are incurred.

C. Government Sector Impact:

The bill may impact DEP operations depending on the extent to which DEP needs to establish secondary water or wastewater service standards, beyond those in existence.

So long as 65 percent of a water utility's customers do not organize to petition the PSC for revocation of the utility's certificate of authorization, Section 1 of the bill poses no

²¹ *Gulf v. Wilson*, 597 So. 2d 270 at 273-274 (Fla. 1992).

²² FPSC, *supra* note 5.

²³ See Order No. PSC-01-1988-PAA-WU, *In re: Application for staff-assisted rate case in Columbia County by Consolidated Water Works, Inc.*, Docket No. 001682-WU (Oct. 8, 2001).

significant impact on PSC operations. Water and wastewater rate cases, subject to Section 2 of the bill, will require additional testimony and evidence be heard by the commission. The FPSC staff has estimated an annual fiscal impact of \$355,768 through fiscal year 2017, based on incremental staffing needs, travel to facilitate meetings between customers and utilities, and other expenses associated with the water and wastewater initiatives.²⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

The PSC staff notes that they could better implement the bill by making the following technical changes:

- Line 76 - “commission staff” instead of “commission” would clarify that staff have authority to review petitions, in order to meet the requirement of notifying customers within ten days.
- Line 90 – “until the commission takes action pursuant to subsection 7” instead of “until the docket is closed” would ensure that a utility on probationary status could meet the benchmarks of corrective action by filing rate cases.
- Line 113 – “a preponderance of the evidence” instead of “clear and convincing evidence” would reduce the burden of proof needed for dismissal of a petition.

The PSC staff notes that given the subjective nature of secondary water quality standards such as color and odor, rule promulgation may pose threshold issues. However, because the DEP or other governmental entities set such water quality standards, the commission would only have to know whether the standards are met. As for the qualities associated with wastewater service (odor, noise, aerosol drift, and lighting), rulemaking may be required.

VIII. Statutes Affected:

This bill creates sections 367.072 and 367.0812 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Community Affairs on February 4, 2014:

The bill refines and clarifies the petition process for revocation. After receiving notice of intent to file a petition from customers, the PSC would:

- notify appropriate parties while maintaining privacy of customer records;
- receive and verify supporting documentation during a 90 day petition signature timeframe;
- allow petitioners one opportunity to cure an insufficient petition;

²⁴FPSC, *Estimated Fiscal Impact of CS for SB272* (Feb. 3, 2014).

- ensure compliance with federal and state secondary water and wastewater criteria; removing references to local or water management districts;
- dismiss the petition when supported by clear and convincing evidence;
- determine whether to place the utility's certificate on probationary status in conjunction with corrective action, or revoke the certificate; and
- disallow petitioners from filing another petition for one year subsequent a dismissal.

Additionally, the bill provides further direction to the PSC on water and wastewater rate cases, by:

- requiring the DEP to set, by rule, acceptable secondary water quality and wastewater service standards;
- allowing companies to recover costs for solutions required by the commission;
- providing penalties, including denial of all or part of a rate increase;
- disallowing a utility from filing a rate case while a revocation docket is open; and
- disallowing customers from filing a petition to revoke the certificate of a utility during rate case proceedings.

CS by Communications, Energy, and Public Utilities on January 14, 2014:

The CS removes the provisions that:

- Limit the rates that may be charged by a private water and wastewater utility; and
- Require adjustment of rates to that of government-owned water and wastewater utilities and that requires that any amount collected the previous 12 months that is greater than the adjusted rate must be refunded.

The bill creates a process whereby customers may petition the commission to require compliance with secondary water quality standards and, if the utility fails to comply with the commission orders, the utility's certificate of authority may be revoked. The bill provides criteria the petition must meet to be considered by the commission. The bill provides criteria the commission must consider in its review of the petition and the action it may take to dispose of the petition.

The bill authorizes the commission to deny all or part of a rate increase for a utility's system or part of a system if it determines that the quality of water or wastewater service is less than satisfactory.

The bill revises the ratemaking process the commission must follow when considering secondary water quality and wastewater service standards to include that the utility inform the commission of the issues and solutions on which the utility and the customers agree and disagree. The commission may require the utility to implement solutions that are in the best interest of the customer and establish benchmarks and require periodic reporting.

B. Amendments:

None.

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



382554

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2014	.	
	.	
	.	
	.	

The Committee on Community Affairs (Simpson) recommended the following:

Senate Amendment (with title amendment)

1
2
3
4
5
6
7
8

Delete everything after the enacting clause
and insert:

Section 1. Section 367.072, Florida Statutes, is created to
read:



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9 367.072 Petition to revoke certificate of authorization.-

10 The Legislature finds that it is in the public interest that
11 water and wastewater service be of good quality and consistent
12 with the standards set forth in this chapter. Therefore, a
13 utility's certificate of authorization may be revoked if, after
14 its customers file a petition in accordance with this section,
15 the commission finds that revocation is in the best interest of
16 the customers.

17 (1) Customers must file a notice of intent with the
18 commission before filing a petition. Within 10 days after
19 receipt of a notice of intent, the commission staff shall:

20 (a) Notify the applicable utility that its customers have
21 filed a notice of intent; and

22 (b) Send the customers instructions detailing the required
23 format and content of the petition and the subsequent process
24 the commission must follow.

25 (2) Within 90 days after receipt of such instructions, the
26 customers must file a petition that, for the purpose of
27 determining whether a utility is providing satisfactory water
28 quality or wastewater service, must:

29 (a) State with specificity each issue that the customers
30 have with the water quality or wastewater service, each time the
31 problem was reported to the utility, and how long each issue has
32 existed; and

33 (b) Be signed by at least 65 percent of a utility's
34 customers within a system. The term "customer" means an
35 individual who owns or rents property that is serviced by a
36 single meter or an individual whose name appears on the bill for
37 a master meter. Only one signature for each service address may



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38 be included on the petition. An individual whose name appears on
39 the bill for a master meter may sign a petition if at least 65
40 percent of the heads of the households served by the master
41 meter, such as tenants or unit owners, support the petition, in
42 which case documentation of such support must be included with
43 the petition.

44 (3) The commission shall review the petition and, within 10
45 days after receipt, notify the customers whether the petition is
46 sufficient or whether additional information is required. If
47 additional information is required, the customers must file a
48 cured petition within 30 days after receipt of the notification.
49 If the customers fail to file the petition in accordance with
50 this subsection, the commission shall dismiss the petition, and
51 the customers may not file another petition for 1 year after the
52 date of dismissal.

53 (4) If the petition is in compliance with this section and
54 the issues identified within the petition support a reasonable
55 likelihood that the water or wastewater utility is failing to
56 provide quality water or wastewater service, a docket shall be
57 opened. Once opened, the utility may not file for a rate case
58 until the docket is closed.

59 (5) A copy of the petition and written notification
60 regarding the prohibition against filing a rate case while the
61 docket remains open must be provided to the utility. The utility
62 shall submit a response to the commission addressing the issues
63 identified within the petition and explaining whether it is
64 providing quality water or wastewater service using the
65 following criteria:

66 (a) Federal and state primary water and wastewater



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67 standards or secondary water quality or wastewater service
68 standards provided in s. 367.0812; and

69 (b) The relationship between the utility and its customers,
70 including each complaint received regarding service quality, the
71 length of time each customer has been complaining about service,
72 the resolution of each complaint, and the time it has taken to
73 address such complaints.

74 (6) The commission shall evaluate the issues identified
75 within the petition, the utility's response as to whether it is
76 providing quality water or wastewater service, and any other
77 factor the commission deems relevant.

78 (7) Notwithstanding s. 367.045 and based upon its
79 evaluation, the commission shall:

80 (a) Dismiss the petition if the decision is supported by
81 clear and convincing evidence, in which case the decision is
82 subject to ss. 120.569 and 120.57;

83 (b) Place the utility's certificate on probationary status
84 and require the utility to take the necessary steps to correct
85 the water quality or wastewater service issues identified. The
86 commission shall set benchmarks within a timeframe, not to
87 exceed 3 years, and may require the utility to provide interim
88 reports describing its progress in meeting such benchmarks. The
89 commission may extend the timeframe for compliance beyond 3
90 years if the circumstances that delay the utility, such as
91 obtaining permits or natural disaster, are not within the
92 utility's control; or

93 (c) Revoke the utility's certificate of authorization, in
94 which case a receiver must be appointed pursuant to s. 367.165
95 until a sale of the utility system has been approved pursuant to



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96 s. 367.071.

97 (8) The commission shall adopt by rule the format of and
98 requirements for a petition and may adopt other rules to
99 administer this section.

100 Section 2. Section 367.0812, Florida Statutes, is created
101 to read:

102 367.0812 Rate fixing; quality of water or wastewater
103 service as criterion.—

104 (1) In fixing rates that are just, reasonable,
105 compensatory, and not unfairly discriminatory, the commission
106 shall consider the extent to which the utility provides water
107 service that meets secondary water quality standards for taste,
108 odor, color, or corrosiveness, as established by the Department
109 of Environmental Protection. In determining whether a utility
110 has satisfied its obligation to provide water service to its
111 customers which meets the standards for taste, odor, color, or
112 corrosiveness, the commission shall consider:

113 (a) Testimony and evidence provided by customers and the
114 utility;

115 (b) The results of past tests required by the Department of
116 Environmental Protection which measure the utility's compliance
117 with the applicable secondary water quality standards or with a
118 county health department;

119 (c) Complaints regarding the applicable secondary water
120 quality standards filed by customers with the commission or the
121 Department of Environmental Protection, or the respective local
122 governmental entity, or a county health department during the
123 past 5 years; and

124 (d) If the commission deems necessary, the results of any



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125 updated test.

126 (2) In fixing just, reasonable, compensatory, and not
127 unfairly discriminatory rates, the commission shall consider the
128 extent to which the utility provides wastewater service to its
129 customers without generating odor, noise, aerosol drift, or
130 lighting in excess of the standards established by the
131 Department of Environmental Protection. In determining the
132 extent to which the utility provides wastewater service to its
133 customers without generating odor, noise, aerosol drift, or
134 lighting in excess of the standards by the Department of
135 Environmental Protection, the commission shall consider:

136 (a) Testimony and evidence provided by customers and the
137 utility;

138 (b) The results of past tests required by the Department of
139 Environmental Protection which measure the utility's compliance
140 with the applicable standards established by the Department of
141 Environmental Protection; and

142 (c) Complaints regarding the alleged odor, noise, aerosol
143 drift, or lighting filed with the Department of Environmental
144 Protection or the commission, or the respective local
145 governmental entity, or a county health department during the
146 past 5 years.

147 (3) (a) In determining the quality of water or wastewater
148 service, the commission shall consider a finding by the
149 department as to whether a utility:

150 1. Has failed to provide water service that meets the
151 secondary water quality standards of the department regarding
152 taste, odor, color, or corrosiveness; or

153 2. Has generated odor, noise, aerosol drift, or lighting in



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154 providing wastewater service in excess of the standards
155 established by the Department of Environmental Protection,
156
157 the utility shall create an estimate of the costs and benefits
158 of a plausible solution to each quality of water or wastewater
159 service issue identified by the commission.

160 (b) The utility shall meet with its customers within a time
161 prescribed by the commission to discuss the estimated costs and
162 benefits of and time necessary for implementing a plausible
163 solution for each quality of service issue identified, and the
164 utility shall report the results of such meeting to the
165 commission.

166 (c) The utility shall inform the commission if:

167 1. The customers and the utility agree on a solution for
168 each quality of service issue identified, what the solution is,
169 and the cost of the solution; or

170 2. The customers and the utility prefer a different
171 solution to at least one of the quality of service issues
172 identified and the solution and cost of the solution preferred
173 by each.

174 (d) The commission may require the utility to implement a
175 solution that is in the best interest of the customers for each
176 quality of service issue. The utility shall be allowed to
177 recover the costs of the solutions ordered by the commission.
178 The commission may establish the necessary benchmarks that a
179 utility must meet for each solution and require the utility to
180 report periodically until each solution is completed.

181 (4) Notwithstanding s. 367.072, customers may not petition
182 the commission to revoke the certificate of authorization of a



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183 utility during the proceedings under this section.

184 (5) The commission may prescribe penalties for a utility's
185 failure to adequately resolve each quality of water or
186 wastewater service issue as required. Penalties may include
187 finest as provided in s. 367.161; a reduction of return on equity
188 of up to 100 basis points; the denial of all or part of a rate
189 increase for a utility's system or part of a system if the
190 commission determines that the water quality is less than
191 satisfactory, until the water quality is found to be
192 satisfactory; or cancellation of the certificate of
193 authorization under s. 367.072.

194 (6) The commission shall adopt rules to assess and enforce
195 compliance with this section. The Department of Environmental
196 Protection shall establish secondary wastewater service
197 standards regarding the generation of odor, noise, aerosol
198 drift, and lighting.

199 Section 3. This act shall take effect October 1, 2014.

200
201 ===== T I T L E A M E N D M E N T =====

202 And the title is amended as follows:

203 Delete everything before the enacting clause
204 and insert:

205 A bill to be entitled
206 An act relating to water and wastewater utilities;
207 creating s. 367.072, F.S.; providing legislative
208 findings; authorizing the Florida Public Service
209 Commission to revoke a certificate of authorization
210 upon receipt of a petition; requiring customers to
211 file a notice of intent with the commission before



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212 submitting a petition; providing criteria for such
213 petition; requiring the commission to take certain
214 steps in response to the petition; prohibiting the
215 customers from filing a petition within a specified
216 timeframe under certain circumstances; prohibiting a
217 utility from filing for a rate case under certain
218 circumstances; requiring the utility to submit a
219 response; requiring the commission to adopt rules;
220 creating s. 367.0812, F.S.; requiring the commission
221 to consider the quality of water or wastewater service
222 when fixing rates; providing criteria that the
223 commission must consider in making its determination;
224 requiring the utility to meet with its customers to
225 discuss the costs and benefits of plausible solutions
226 if the commission finds that the utility has failed to
227 meet certain water or wastewater quality standards;
228 requiring that the utility be allowed to recover the
229 costs of the solutions ordered by the commission;
230 prohibiting customers from petitioning the commission
231 to revoke the certificate of authorization of a
232 utility under certain circumstances; authorizing the
233 commission to impose penalties on a utility for
234 certain failures; requiring the commission to adopt
235 rules; requiring the Department of Environmental
236 Protection to establish secondary wastewater service
237 standards regarding the generation of odor, noise,
238 aerosol drift, and lighting; providing an effective
239 date.

By the Committee on Communications, Energy, and Public Utilities; and Senator Simpson

579-01067-14

2014272c1

1 A bill to be entitled
2 An act relating to water and wastewater utilities;
3 creating s. 367.072, F.S.; providing legislative
4 intent; authorizing the Florida Public Service
5 Commission to suspend or revoke a certificate of
6 authorization upon receipt of a petition; providing
7 criteria for such petition; authorizing the commission
8 to adopt rules; creating s. 367.0812, F.S.; requiring
9 the commission to consider the quality of water or
10 wastewater service when fixing rates; providing
11 criteria that the commission must consider in making
12 its determination; requiring the utility to meet with
13 its customers to discuss the costs and benefits of
14 plausible solutions if the commission finds that the
15 utility has failed to meet certain water or wastewater
16 quality standards; requiring the commission to adopt
17 rules; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 367.072, Florida Statutes, is created to
22 read:

23 367.072 Petition to revoke certificate of authorization.-
24 The Legislature finds that it is in the public interest that
25 water and wastewater service be of good quality and consistent
26 with the standards set forth in this chapter. The Legislature
27 finds that the customers of a utility are in a position to
28 initially assess the quality of the water or wastewater service
29 provided. Therefore, a utility's certificate of authorization

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2014272c1

30 may be suspended or revoked if its customers file a petition
31 with the commission in accordance with this section.

32 (1) For the purpose of determining whether a utility is
33 providing quality water or wastewater service, a petition must:

34 (a) State with specificity each issue customers have with
35 the water or wastewater service; and

36 (b) Be signed by at least 65 percent of a system's
37 customers. The term "customer" means an individual whose
38 property is serviced by a single meter or a person whose name
39 appears on the bill for a master meter. A person whose name
40 appears on the bill for a master meter may sign a petition if at
41 least 65 percent of the customers, tenants, or unit owners
42 served by the master meter support the petition, in which case
43 documentation of such support must be included with the
44 petition.

45 (2) Upon receipt, the commission shall review the petition
46 and determine if it is in compliance with this section and
47 whether the issues identified within the petition support a
48 finding that the water or wastewater utility is failing to
49 provide quality water or wastewater service. If the commission
50 finds that there is a reasonable likelihood that the utility is
51 not providing quality water or wastewater service, then it shall
52 submit a copy of the petition to the respective utility. The
53 utility shall submit a response to the commission addressing the
54 issues identified within the petition and explaining whether it
55 is providing quality water or wastewater service using the
56 following criteria:

57 (a) Federal, state, and local primary standards or quality
58 standards pursuant to s. 367.0812; and

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59 (b) The relationship between the utility and its customers,
60 including each complaint received regarding service quality, the
61 length of time each customer has been complaining about service,
62 the resolution of each complaint, and the time it has taken to
63 address such complaints.

64 (3) The commission shall evaluate the issues identified
65 within the petition; the utility's response as to whether it is
66 providing quality water or wastewater service; the rates of the
67 utility in comparison with other utilities of similar size and
68 operational characteristics; and any other factor the commission
69 deems relevant.

70 (4) Notwithstanding s. 367.045 and based upon its
71 evaluation, the commission shall:

72 (a) Dismiss the petition if the decision is supported by
73 competent substantial evidence, in which case the decision is
74 subject to ss. 120.569 and 120.57;

75 (b) Suspend the utility's certificate and require the
76 utility to take the necessary steps to correct the water or
77 wastewater service issues identified. The commission shall set
78 benchmarks within a timeframe, not to exceed 3 years, and may
79 require the utility to provide interim reports describing its
80 progress in meeting such benchmarks; or

81 (c) Revoke the utility's certificate, in which case a
82 receiver must be appointed pursuant to s. 367.165 until a sale
83 of the utility system has been approved pursuant to s. 367.071.

84 (5) The commission shall adopt by rule the format of and
85 requirements for a petition and may adopt other rules to
86 administer this section.

87 Section 2. Section 367.0812, Florida Statutes, is created

579-01067-14

2014272c1

88 to read:

89 367.0812 Rate fixing; quality of water or wastewater
90 service as criterion.-

91 (1) In fixing rates that are just, reasonable,
92 compensatory, and not unfairly discriminatory, the commission
93 shall consider the extent to which the utility provides water
94 service that meets secondary water quality standards for taste,
95 odor, color, or corrosiveness, as established by the Department
96 of Environmental Protection, the respective water management
97 district, or the local governmental entity. The commission may
98 deny all or part of a rate increase for a utility's system or
99 part of a system if it determines that the quality of water
100 service is less than satisfactory. In determining whether a
101 utility has satisfied its obligation to provide water service to
102 its customers which meets the standards for taste, odor, color,
103 or corrosiveness, the commission shall consider:

104 (a) Testimony and evidence provided by customers and the
105 utility;

106 (b) The results of past tests required by the Department of
107 Environmental Protection or a county health department which
108 measure the utility's compliance with the applicable secondary
109 water quality standards;

110 (c) Complaints regarding the applicable secondary water
111 quality standards filed by customers with the commission, the
112 Department of Environmental Protection, the respective water
113 management district, or the respective local governmental entity
114 during the past 5 years; and

115 (d) If the commission deems necessary, the results of any
116 updated test.

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117 (2) In fixing just, reasonable, compensatory, and not
118 unfairly discriminatory rates, the commission shall consider the
119 extent to which the utility provides wastewater service to its
120 customers without generating odor, noise, aerosol drift, or
121 lighting that adversely affects customers. The commission may
122 deny all or part of a rate increase for a utility's system or
123 part of a system if it determines that the quality of wastewater
124 service is less than satisfactory. In determining the extent to
125 which the utility provides wastewater service to its customers
126 without generating odor, noise, aerosol drift, or lighting that
127 adversely affects customers, the commission shall consider:

128 (a) Testimony and evidence provided by customers and the
129 utility;

130 (b) Complaints regarding the alleged odor, noise, aerosol
131 drift, or lighting filed with the Department of Environmental
132 Protection, a county health department, or the respective local
133 governmental entity during the past 5 years; and

134 (c) Complaints regarding the alleged odor, noise, aerosol
135 drift, or lighting filed with the commission during the past 5
136 years.

137 (3) (a) If the commission determines that a utility:

138 1. Has failed to provide water service that meets the
139 secondary water quality standards of the department, the
140 respective water management district, or the local governmental
141 entity, regarding taste, odor, color, or corrosiveness; or

142 2. Has generated odor, noise, aerosol drift, or lighting in
143 providing wastewater service that adversely affects customers,

144
145 the utility shall create an estimate of the costs and benefits

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146 of a plausible solution to each issue identified by the
147 commission.

148 (b) The utility shall meet with its customers within a time
149 prescribed by the commission to discuss the estimated costs and
150 benefits of and time necessary for implementation of a plausible
151 solution for each quality of service issue identified and the
152 utility shall report the results of such meetings to the
153 commission.

154 (c) The utility shall inform the commission if:

155 1. The customers and the utility agree on a solution for
156 each quality of service issue identified; or

157 2. The customers and utility prefer a different solution to
158 at least one of the quality of service issues identified.

159 (d) The commission may require the utility to implement a
160 solution that is in the best interest of the customers for each
161 quality of service issue. The commission may establish the
162 necessary benchmarks a utility must meet for each solution and
163 require the utility to report periodically until each solution
164 is completed.

165 (4) The commission shall adopt rules to assess and enforce
166 compliance with this section. The rules must prescribe penalties
167 for a utility's failure to adequately resolve each quality of
168 service issue as required by the commission, which may include
169 finances as provided in s. 367.161, a reduction of return on equity
170 of up to 100 basis points, or cancellation of the certificate of
171 authority under s. 367.072.

172 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/2014
Meeting Date

Topic Water

Bill Number 272
(if applicable)

Name Matthew McCaffree

Amendment Barcode N/A
(if applicable)

Job Title Director of State Regulatory Relations

Address 2001 L St NW
Street

Phone 202-466-3331

Washington DC 20036
City State Zip

E-mail matt@rawc.com

Speaking: For Against Information

Representing National Association of Water Companies

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: SB 301

Caption: Community Affairs Committee

Case:

Judge:

Type:

Started: 2/4/2014 2:02:15 PM

Ends: 2/4/2014 3:16:04 PM Length: 01:13:50

2:02:19 PM Call to order
2:03:23 PM Tab 2 CS/SB 230 Senator Simmons
2:04:37 PM Senator Soto
2:05:09 PM Senator Simmons
2:05:54 PM Roll call on SB 230
2:06:06 PM Bill reported favorably
2:06:11 PM Tab 5 SB 482 Senator Hays
2:07:59 PM Senator Smith
2:09:17 PM Roll call on SB 482
2:09:34 PM Bill reported favorably
2:09:49 PM Tab 4 SB 262 Senator Abruzzo
2:10:38 PM Amendment 1 Barcode 396226 Senator Soto
2:11:57 PM Senator Abruzzo
2:12:05 PM Senator Latvala
2:12:28 PM Amendment adopted
2:12:48 PM Roll call on SB 262
2:13:02 PM Bill reported favorably
2:13:07 PM Tab 3 CS/SB 236 Senator Richter's Aid Michael Nachef
2:14:37 PM Roll call on SB 236
2:14:48 PM Bill reported favorably
2:14:56 PM Tab 1 SB 372 Senator Galvano
2:18:07 PM Senator Soto
2:19:35 PM Speaker Charles Pattison representing 1000 Friends of Florida
2:20:58 PM Speaker David Cullen representing Sierra Club Florida
2:24:39 PM Senator Galvano
2:24:55 PM Roll call on SB 372
2:25:12 PM Bill reported favorably
2:25:21 PM Tab 6 CS/SB 380 Senator Bean's Legislative Aid James Kotas
2:26:19 PM Amendment 1 Barcode 494604 Senator Latvala
2:27:12 PM Amendment adopted
2:27:15 PM Amendment 2 Barcode 322334
2:28:13 PM Amendment adopted
2:28:53 PM Roll call on SB 380
2:29:11 PM Bill reported favorably
2:29:16 PM Tab 7 SB 388 Senator Bean's Aid Ms. Alexander
2:30:54 PM Roll call on SB 388
2:31:10 PM Bill reported favorably
2:31:17 PM Tab 8 SB 356 Senator Thrasher
2:34:07 PM Senator Smith
2:35:59 PM Senator Thompson
2:36:16 PM Senator Soto
2:37:59 PM Speaker Chris Lyon representing Florida Vacation Rental Managers Association
2:42:43 PM Senator Stargel
2:44:29 PM Speaker Casey Cook representing League of Cities
2:46:11 PM Senator Stargel
2:48:26 PM Senator Smith
2:49:59 PM Senator Thrasher
2:51:46 PM Roll call on SB 356
2:52:05 PM Bill reported favorably
2:52:21 PM Tab 10 CS/SB 272 Senator Simpson's Legislative Aid Patrick Weightman
2:53:59 PM Amendment 1 Barcode 382554
2:54:21 PM Senator Smith

2:56:26 PM Amendment adopted
2:56:38 PM Speaker Matthew McCaffree representing National Association of Water Companies
3:00:14 PM Senator Bradley
3:03:11 PM Roll call on SB 272
3:03:36 PM Bill reported favorably
3:03:44 PM Tab 9 SB 220 Senator Thompson
3:04:53 PM Amendment 1 Barcode 287544
3:05:14 PM Senator Thompson
3:05:34 PM Amendment adopted
3:06:05 PM Speaker Bill Herrle representing National Federation of Independent Business
3:09:09 PM Senator Soto
3:10:40 PM Senator Stargel
3:11:22 PM Senator Bradley
3:11:43 PM Cheyanne Costilla Florida Commission on Human Relations
3:14:07 PM Senator Thompson
3:15:21 PM Roll call on SB 220
3:15:37 PM Bill reported favorably
3:15:59 PM Adjournment