

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Monday, February 17, 2014
TIME: 4:00 —6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Detert, Chair; Senator Abruzzo, Vice Chair; Senators Bean, Hays, Hukill, Margolis, Richter, Ring, Simpson, Stargel, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 198 Clemens (Identical H 527)	Social Media Privacy; Prohibiting an employer from requesting or requiring access to a social media account of an employee or prospective employee; prohibiting an employer from taking retaliatory personnel action for an employee's failure to provide access to his or her social media account; prohibiting an employer from failing or refusing to hire a prospective employee who does not provide access to his or her social media account, etc.	CM 02/17/2014 GO JU RC
2	CS/SB 218 Transportation / Grimsley (Similar H 259, Identical H 345)	Transportation; Providing an exception for payment of certain utility work necessitated by a project on the State Highway System for municipally owned utilities or county-owned utilities located in rural areas of critical economic concern and authorizing the Department of Transportation to pay for such costs under certain circumstances; exempting from permitting certain signs placed by tourist-oriented businesses, certain farm signs placed during harvest seasons, certain acknowledgement signs on publicly funded school premises, and certain displays on specific sports facilities, etc.	TR 11/07/2013 Fav/CS CU 01/14/2014 Favorable CM 02/17/2014 AP
3	SB 496 Simpson (Similar H 291, Compare H 471, H 565)	Warranty Associations; Authorizing electronic transmission of service agreements and home warranties; providing requirements for electronic transmission; revising criteria authorizing premiums of certain service warranty associations to exceed their specified net assets limitations; revising requirements relating to contractual liability policies that insure warranty associations; providing requirements for the delivery of service warranty contracts, etc.	BI 02/04/2014 Favorable CM 02/17/2014

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, February 17, 2014, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 500 Ring	Sales, Storage, and Use Tax; Removing the tax from security systems services, etc. CM 02/17/2014 AFT AP	
5	SB 654 Clemens (Similar H 685)	Business Organizations; Providing additional exceptions regarding the requirement that limited liability company names be distinguishable from the names of other entities or filings; providing additional exceptions regarding the requirement that corporate names be distinguishable; providing that the amendment of articles of incorporation or the merger, conversion, or share exchange of a social purpose or benefit corporation entitles the shareholders to appraisal rights; establishing requirements for the formation of a social purpose corporation and the formation of a benefit corporation, etc. CM 02/17/2014 JU RC	
6	SB 726 Detert	Reemployment Assistance Appeals Commission; Revising membership requirements of the commission; removing a provision requiring payment of a daily stipend for certain commissioners, etc. CM 02/17/2014 GO	
7	Workshop - Discussion and testimony only on the following (no vote to be taken): Professional Sports - Current Statutory Programs and History		

Other Related Meeting Documents

An electronic copy of the Appearance Request form is available to download from any Senate committee page on the Senate's website, www.flsenate.gov

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 198

INTRODUCER: Senators Clemens and Latvala

SUBJECT: Social Media Privacy

DATE: February 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	Pre-meeting
2.			GO	
3.			JU	
4.			RC	

I. Summary:

SB 198 prohibits employers from requiring or requesting that an employee or a prospective employee provide a user name, password, or other means of accessing a social media account. An employer may not take an adverse employment action against an employee or refuse to hire a prospective employee based on a refusal to provide such access. Employers who violate these provisions may be subject to a civil action and if the employee or prospective employee prevails, he or she may be granted injunctive relief or may recover actual damages or \$500, whichever is greater. A prevailing employee or prospective employee may also recover court costs and reasonable attorney fees.

II. Present Situation:

Federal and State Employee Protections

Under current law, employers are prohibited from discriminating against applicants or employees on the basis of disabilities, race or color, gender, national origin, religion, age, or genetic information.¹ These prohibitions can be found in the Americans with Disabilities Act,² the Civil Rights Act of 1964,³ the Age Discrimination in Employment Act of 1967,⁴ and the Genetic Information Nondiscrimination Act of 2008.⁵ Additionally, the federal bankruptcy law makes it illegal for an employer to discriminate against an individual based on bankruptcy.⁶

¹ More information is available on the U.S. Equal Employment Opportunity Commission website, "Discrimination by Type," available at <http://www.eeoc.gov/laws/types/index.cfm> (last visited Feb. 5, 2014). Gender discrimination also includes issues related to pregnancy, childbirth, related medical conditions, sexual harassment, and equal pay.

² 42 U.S.C. s. 12101 et. seq.

³ 42 U.S.C. s. 2000e et. seq.

⁴ 29 U.S.C. s. 621 et. seq.

⁵ 29 U.S.C. s. 1635 et. seq.

⁶ 11 U.S.C. s. 525.

Florida law also provides similar protections from discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or marital status.⁷ Florida law also provides protection from employment discrimination on the basis of sickle-cell trait.⁸

Employers may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. In some cases a job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.

Employers are not specifically prohibited from asking an employee or applicant his or her age or date of birth, race, national origin, gender, or status of pregnancy. In fact, it can be necessary for employers to track information about race for affirmative action purposes or applicant flow; the U.S. Equal Employment Opportunity Commission (EEOC) suggests the use of separate forms to keep information about race separate from the application. However, in general, with regard to interview questions, requests for certain information will be closely scrutinized to ensure that the inquiry was made for a lawful purpose, rather than for a purpose prohibited by a federal law. If the information is used in the selection decision and members of particular groups are excluded from employment, the inquiries can constitute evidence of discrimination. For example, unless the information is for such a legitimate purpose, pre-employment questions about race can suggest that race will be used as a basis for making selection decisions.

Social Media and Employment

In recent years use of social media by individuals has become widespread and pervasive. The largest websites boasts monthly average users of over 1.5 billion.⁹ Social media refers to electronic communication through which users may create online communities to share information, ideas, personal messages, and other content.¹⁰ Social media is used for both personal and commercial purposes, with businesses primarily using the platform to interact with consumers. Individuals may use the platform for a variety of reasons, including social, business, and educational uses.

⁷ Chapter 760, F.S., Florida Civil Rights Act.

⁸ Section 448.075, F.S.

⁹ Facebook reports the number of average monthly active users of 1.23 billion as of December 31, 2013 ("Facebook Reports Fourth Quarter and Full Year 2013 Results," available at <http://investor.fb.com/releasedetail.cfm?ReleaseID=821954> (last visited February 5, 2014)); Twitter reports the number of average monthly users of 241 million in October 2013 ("Twitter Reports Fourth Quarter and Fiscal Year 2013 Results," available at <https://investor.twitterinc.com/releasedetail.cfm?releaseid=823321> (last visited February 5, 2014)); LinkedIn reports a membership of 259 million members ("LinkedIn Announces Third Quarter 2013 Financial Results," available at <http://press.linkedin.com/News-Releases/319/LinkedIn-Announces-Third-Quarter-2013-Financial-Results> (last visited February 5, 2014).

¹⁰ Merriam-Webster definition, available at <http://www.merriam-webster.com/dictionary/social%20media> (last visited February 4, 2014).

Increasingly, employers have used social media to monitor employees' behavior outside the workplace and to screen applicants for employment.¹¹ Employers indicate that reviewing information about prospective employees available online helps reduce legal liability associated with negligent hiring or may be used to discover or investigate otherwise impermissible behavior such as harassment of a co-worker.¹² However, access to social media accounts may also provide the employer information that it would not legally be permissible to inquire of an employee or an applicant, such as the nature of an individual's disability.¹³

Since 2012, several states have introduced legislation or enacted laws that limit an employer's or prospective employer's ability to require access to the social media accounts of its employees or applicants.¹⁴ A few states have also passed laws that provide protection for students by limiting the ability of educational institutions to require access to social media accounts.

Federal Law and Social Media

National Labor Relations Act

The National Labor Relations Board (NLRB) has issued guidance that certain work-related conversations may be protected concerted activity under the National Labor Relations Act (NLRA). The NLRA protects the rights of certain employees to organize into labor organizations and engage in concerted activity for the purposes of collective bargaining.¹⁵ The law prohibits employers from interfering or restraining this activity. The guidance from the NLRB, provided in a series of memos from its General Counsel, advises that activity of social media in which terms and conditions of employment were addressed with other employees, is protected as "protected concerted activity." The General Counsel also advises that social media policies should not be so broad as to prohibit activities that would be protected under federal law, and that an employee's "gripes" are not protected activity if they are not made in relation to group activity among employees.¹⁶

Stored Communications Act

Some courts have found some privacy right exists under the Stored Communications Act (SCA). The SCA, enacted in 1986, makes it unlawful for anyone who "intentionally accesses without authorization a facility through which an electronic communications service is provided; or intentionally exceeds an authorization to access such facility and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in the electronic

¹¹ Sprague, Robert, *Invasion of the Social Networks: Blurring the Line Between Personal Life and the Employment Relationship*, 50 U. Louisville L. Rev. 1, 4 (2011). One study found that nearly 80 percent of those involved in hiring and recruiting individuals research the candidates on the Internet.

¹² Id. at 7-9, 19-27.

¹³ Id. at 11-12.

¹⁴ The states who have enacted laws include Arkansas, California, Colorado, Illinois, Maryland, Michigan, Nevada, New Jersey, New Mexico, Oregon, Utah, and Washington. National Conference of State Legislatures, "Employer Access to Social Media Usernames and Passwords," available at <http://www.ncsl.org/research/telecommunications-and-information-technology/employer-access-to-social-media-passwords-2013.aspx> (last visited February 5, 2014). Links are available for legislation considered in 2012, 2013, and 2014.

¹⁵ 29 U.S.C. s. 181 et. seq. The NLRA does not apply to the federal government or any wholly owned government corporation, federal reserve banks, state government or its political divisions, those subject to the Railway Labor Act, agricultural laborers, independent contractors, or those employed by either a parent or spouse.

¹⁶ The NLRB and Social Media, see <http://www.nlr.gov/news-outreach/fact-sheets/nlr-and-social-media> (last visited February 10, 2014).

storage in such system...”¹⁷ The SCA includes some exceptions to its provisions, including conduct authorized by the person or entity providing the electronic communications service, by a user of that service, or certain governmental agencies with specific authorization.

A few courts have found that the SCA provides individuals with some privacy rights. For example, *Ehling v. Monmouth-Ocean Hospital Service Corp.*, involved screenshots of an employee’s Facebook wall that were provided to a supervisor by a co-worker. Based on the information provided in these screenshots, the employer took adverse employment action against the employee and the employee brought suit alleging violations of the Stored Communications Act and invasion of privacy, among other claims. The court held that a Facebook wall post met the definition of an electronic communication and is held in electronic storage on the Facebook servers.¹⁸ If a user chooses to make posts on her or his Facebook wall private, meaning that it is not publicly available, then it would be protectable under the SCA.¹⁹

Social Networking Online Protection Act

The Social Networking Online Protection Act was introduced in U.S. House of Representatives in 2013. It prohibits employers from requiring or requesting employees or applicants to provide a user name, password, or any other means of accessing a private email or social networking account. It also provides for civil penalties and injunctive relief for violations of its provisions.²⁰

III. Effect of Proposed Changes:

Section 1 creates s. 448.007, F.S., to limit an employer’s access to employees’ social media accounts.

“Social media account” is defined as an interactive account or profile that an individual establishes through an electronic application, service, or platform that is used to generate or store content, such as blogs, instant messages, or e-mail not generally available to the public.

The bill provides that an employer may not require or request an employee or prospective employee to disclose the username, password, or other means of access to a social media account maintained by the employee or prospective employee. The employer may not require or request an employee or prospective employee to provide the employer access to the employee or prospective employee’s social media account if its contents are not available to the general public. Nothing in the bill prevents an employer from accessing and viewing publicly available information on an employee’s social media account.

¹⁷ 18 U.S.C. s. 2701

¹⁸ 2013 WL 4436539 (D.N.J. Aug. 20, 2013).

¹⁹ Id. citing *Viacom Int’l Inc. v. Youtube, Inc.* 253 F.R.D. 256, 265 (S.D.N.Y. 2008); *Crispin v. Christian Audiger, Inc.* 717 F.Supp.2d 965, 991 (C.D. Cal 2010); cf. *Snow v. DirecTV, Inc.* 450 F.3d 1314, 1321 (11th Cir. 2006).

²⁰ H.R. 537 (113th Congress). The bill is currently in the Subcommittee on Workplace Protections.

The bill prohibits the employer from taking any retaliatory personnel action against an employee for refusing to allow access to his or her social media account.²¹ An employer may not refuse or fail to hire an individual based on a refusal to allow access to his or her social media account.

The bill provides a private right of action against an employer who violates the provisions of the bill. The action must be brought within 2 years of occurrence of the violation. An employee or prospective employee may recover damages in the amount of actual damages or \$500, whichever is greater, and may seek injunctive relief to enjoin the employer from continued violations. The bill provides that a prevailing plaintiff may recover court costs and reasonable attorney fees. Civil actions may be brought in a court in the county in which the employee or prospective employee resides or where the alleged violation occurred.

Section 2 provides an effective date of October 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:

Businesses may incur costs in defending lawsuits alleging violations of these provisions.

C. Government Sector Impact:

SB 198 may have some indeterminate impact on the State Court System due to the availability of a new cause of action.

²¹ “Retaliatory personnel action” has the same meaning as provided in s. 448.101, F.S., which is the discharge, suspension, demotion, or any other adverse employment action in the terms and conditions of employment taken by an employer against an employee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not provide exemptions for access to employee social media accounts that may be required under state or federal law or for licensing entities, who may require access as part of the investigatory process. Additionally, the bill does not provide an exception for social media accounts established expressly for business purposes by employees.

VIII. Statutes Affected:

This bill creates section 448.077 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.



320530

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

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

Senate Amendment (with title amendment)

Between lines 63 and 64

insert:

(4) This section does not prevent an employer from requesting or requiring an employee to disclose a username,



320530

8 password, or other means of accessing a social media account
9 used for business purposes.

10

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

12 And the title is amended as follows:

13 Delete line 13

14 and insert:

15 of attorney fees and court costs; specifying that an
16 employer is not prohibited from seeking access to
17 certain social media accounts; providing an

By Senator Clemens

27-00181-14

2014198__

A bill to be entitled

An act relating to social media privacy; creating s. 448.077, F.S.; providing definitions; prohibiting an employer from requesting or requiring access to a social media account of an employee or prospective employee; prohibiting an employer from taking retaliatory personnel action for an employee's failure to provide access to his or her social media account; prohibiting an employer from failing or refusing to hire a prospective employee who does not provide access to his or her social media account; authorizing civil actions for violations; providing for recovery of attorney fees and court costs; providing an effective date.

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

Section 1. Section 448.077, Florida Statutes, is created to read:

448.077 Employer access to employee social media accounts prohibited.

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

(a) "Electronic communications device" means a device that uses electronic signals to create, transmit, or receive information, including computers, telephones, personal digital assistants, and other similar devices.

(b) "Retaliatory personnel action" has the same meaning as in s. 448.101.

(c) "Social media account" means an interactive personal

Page 1 of 3

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

27-00181-14

2014198__

account or profile that an individual establishes and uses through an electronic application, service, or platform used to generate or store content, including, but not limited to, videos, still photographs, blogs, video blogs, instant messages, audio recordings, or e-mail that is not available to the general public.

(2) An employer may not do any of the following:

(a) Request or require an employee or prospective employee to disclose a username, password, or other means of accessing a social media account through an electronic communications device.

(b) Request or require an employee or prospective employee to take an action that allows the employer to gain access to the employee's or prospective employee's social media account if the account's contents are not available to the general public.

(c) Take retaliatory personnel action against an employee for refusing to give the employer access to the employee's social media account.

(d) Fail or refuse to hire a prospective employee as a result of the prospective employee's refusal to allow the employer access to the prospective employee's social media account.

(3) An employee or prospective employee may bring a civil action against an employer who violates this section in a court located in the county in which the employee or prospective employee resides or where the alleged violation occurred. Such action must be brought within 2 years after the violation occurred. The employee or prospective employee may seek injunctive relief to restrain the employer from continuing to

Page 2 of 3

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

27-00181-14

2014198__

59 act in violation of this section and may recover damages in an
60 amount equal to the actual damages arising from the violation or
61 \$500 per violation, whichever is greater. An employee or
62 prospective employee who prevails is entitled to recover court
63 costs and reasonable attorney fees.

64 Section 2. This act shall take effect October 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Transportation

SENATOR JEFF CLEMENS

27th District

October 8, 2013

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

Chair Detert:

I respectfully request that SB 198 (Social Media Privacy) be added to the agenda for the next Committee on Commerce and Tourism meeting.

Senate Bill 198 will make it illegal for an employer to request or require passwords to personal internet and social networking accounts as a condition of employment. The bill will also protect the privacy of current employees against employers demanding passwords to social media accounts.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Clemens".

Senator Jeff Clemens
Florida Senate District 27

REPLY TO:

- 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

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 Commerce and Tourism

BILL: CS/SB 218

INTRODUCER: Transportation Committee and Senator Grimsley

SUBJECT: Transportation

DATE: February 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Fav/CS
2.	Wiehle	Caldwell	CU	Favorable
3.	Malcolm	Hrdlicka	CM	Pre-meeting
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 218 revises provisions relating to certain transportation-related utility relocation expenses, outdoor advertising permit exemptions, and the tourist-oriented directional sign program. The bill:

- Provides an exception for certain public-utilities in a rural area of critical economic concern (RACEC) from the requirement that a utility bear the cost to remove or relocate utility lines in certain circumstances;
- Repeals unnecessary rulemaking authority relating to lighting restrictions for certain outdoor advertising signs;
- Exempts from permitting certain signs placed by tourist-oriented businesses, farm signs placed during harvest seasons, “acknowledgement signs” on public school premises, and displays on specific sports facilities;
- Provides that certain exemptions from sign permitting may not be implemented if such exemptions will adversely impact the allocation of federal funds to the Florida Department of Transportation (FDOT);
- Directs the FDOT to notify a sign owner that a sign must be removed if federal funds are adversely impacted, and authorizes the FDOT to remove the sign and assess costs to the sign owner if the sign is not removed; and
- Expands the tourist-oriented directional sign program to all rural and conventional roads, and clarifies provisions relating to the program.

II. Present Situation:

Utility Relocation Expenses

Section 337.401, F.S., regulates the use of road and rail corridor right-of-ways by utilities.¹ It authorizes the FDOT and local governmental entities² to regulate the placement and maintenance of utility lines along, across, or on any public road or rail corridor under their respective jurisdictions.

Section 337.403, F.S., requires a utility owner to remove or relocate a utility that the authority finds is unreasonably interfering with the use, maintenance, improvement, extension, or expansion of the road or rail corridor. Upon 30 days' written notice by the authority, the utility owner must initiate work on the removal or relocation. The work must be completed within a reasonable time stated in the notice or as agreed to by the authority and the utility owner. The utility owner must bear the cost of the removal or relocation except in the following cases:

- When utility relocation is required due to construction of a project on the federal-aid interstate system and federal funding will cover at least 90 percent of the project cost, the FDOT pays for the removal or relocation.
- When utility work is performed as part of a transportation facility construction contract, the FDOT may participate in those costs that exceed the FDOT's estimate of the cost of the work by 10 percent.³
- When utility work is performed in advance of a construction contract, the FDOT may participate in the cost of removing trees, stumps, and roots necessary for the relocation.
- If the utility being removed or relocated was initially installed to exclusively serve the authority or its tenants, the authority bears the cost of the utility work.
- If, in an agreement between a utility and an authority made after July 1, 2009, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority without the agreement expressly addressing future responsibility for the cost of removal or relocation of the utility, the authority bears the cost of such removal or relocation.
- If the utility is an electric facility being relocated underground to enhance vehicular, bicycle, and pedestrian safety, and if ownership of the facility has been transferred to a public utility within the past 5 years, the FDOT bears the cost of the necessary utility work.
- An authority may bear the costs of utility work when the utility is not able to establish a compensable property right in the property where the utility is located if:
 - The utility was physically located on the property before the authority acquired rights in the property;
 - The utility demonstrates it has a compensable property right in all adjacent properties along the alignment of the utility; and
 - The information available to the authority does not establish the priorities of the authority's and the utility's interest in the property.

¹ "Utility" means "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structure[]" Section 337.401(1)(a), F.S.

² Referred to in ss. 337.401-337.404, F.S., as the "authority."

³ However, the FDOT's participation amount is limited to the difference between the estimate of the work in the agreement plus 10 percent and the amount awarded for the utility work in the construction contract. Section 337.403(1)(b), F.S.

The FDOT advises that under its procedure 710-030-005-a, *Utility Work for Local Government Utilities*,⁴ when a local-government utility cannot afford work necessitated by an FDOT project as determined by the FDOT's comptroller, the FDOT will pay for the work. In such cases, the utility signs a promissory note to reimburse the FDOT, thereby allowing the FDOT project to proceed, potentially avoiding contractor delay claims. According to the FDOT, if the utility does not reimburse the FDOT within 10 years, the FDOT can take steps to write off the loss as opposed to undergoing collection efforts.⁵

The FDOT advises it currently "has approximately \$12 million in promissory notes for utility relocations that under the legislation would be eligible for waivers."⁶

Control of Outdoor Advertising

Since the passage of the Highway Beautification Act (HBA)⁷ in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along federal-aid primary, interstate, and National Highway System roads. The primary features of the HBA include:

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting, and spacing provisions as agreed to by the state and federal governments.⁸ Billboard controls apply to interstates, federal-aid primary roads, and other highways that are part of the National Highway System.
- States have the discretion to remove legal nonconforming signs⁹ along highways. However, the payment of just compensation is required for the removal of any lawfully erected billboard along the specified roads.¹⁰
- States and localities may enact stricter laws than stipulated in the HBA.¹¹

The HBA requires the development of standards for certain signs as well as the removal of nonconforming signs.¹² While states are not directly forced to control signs, failure to impose the required controls can result in a substantial penalty. The penalty for noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.¹³

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation¹⁴ incorporating the HBA's required controls, the FDOT requires commercial signs to meet certain requirements to obtain sign permits when they are within 660 feet of interstate and federal-Aid primary highways in urban areas, or visible at any distance from the

⁴ Available at <http://www2.dot.state.fl.us/proceduraldocuments/procedures/bin/710030005.pdf> (last visited Feb. 10, 2014).

⁵ FDOT Legislative Bill Analysis, *SB 218*, 2 (Oct. 25, 2013) (on file with the Committee on Commerce and Tourism).

⁶ *Id.* at 4.

⁷ 23 U.S.C. s. 131 et seq.

⁸ *Id.* at (d); *see id.* at (t).

⁹ A legal "nonconforming sign" is a sign that was legally erected according to the applicable laws and regulations of the time, but which does not meet current laws or regulations. Section 479.01(17), F.S.

¹⁰ 21 U.S.C. s. 131(g).

¹¹ *Id.* at (k).

¹² *Id.* at (d) and (r).

¹³ *Id.* at (b).

¹⁴ Available at <http://www.scenic.org/storage/PDFs/FSA/fl1965.pdf> (last visited Feb. 10, 2014).

same roadways when outside of urban areas. The agreement embodies the federally-required effective control of the erection and maintenance of outdoor advertising signs, displays, and devices.¹⁵ Absent this effective control, the non-compliance penalty of 10 percent of federal highway funds may be imposed.

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law and regulations and the 1972 agreement.

On-Premise Signs/Lighting Restrictions/Rulemaking Authority

Section 479.16(1), F.S., exempts from signage permitting, signs on the premises of an establishment that consist primarily of the name of the establishment or identify the merchandise, services, activities, or entertainment sold, produced, manufactured, or furnished on the premises, provided the signs comply with the lighting restrictions "under department rule adopted pursuant to s. 479.11(5), F.S."

Section 479.11(5), F.S., prohibits an on-premise sign that displays "intermittent lights not embodied in the sign, or any rotating or flashing light within 100 feet of the outside boundary of the right-of-way of any [state or federal highway or interstate] or which is illuminated in such a manner so as . . . to impair the vision of motorists or otherwise distract motorists"

The FDOT currently has no adopted rule that addresses lighting restrictions for on-premise signs pursuant to s. 479.11(5), F.S., and instead relies on the quoted statute. The rulemaking authority in s. 479.16(1), F.S., is therefore unnecessary.¹⁶

Other Permit Exemptions

In addition to the exemption for on-premise signs in s. 479.16(1), F.S., s. 479.16, F.S., includes a number of other signs for which permits are not required, including:

- Signs on property stating only the name of the owner, lessee, or occupant of the premises and no larger than 8 square feet in area;
- Signs no larger than 8 square feet that are owned by and relate to the facilities or activities of churches, civic organizations, fraternal organizations, charitable organizations, or government agencies;
- Signs placed on benches, transit shelters, and waste receptacles; and
- Signs no larger than 16 square feet placed at a state highway road junction denoting only the distance or direction of a residence or farm, or, in a rural area where a hardship is created because a small business is not visible from the junction, one sign no larger than 16 square feet, denoting only the name of, and the distance and direction to, the business.

The final exemption does not apply to charter counties and may not be implemented if the federal government notifies the FDOT that implementation will adversely affect the allocation of federal funds to the FDOT.¹⁷

¹⁵ 21 U.S.C. s. 131(b) and (d).

¹⁶ E-mail from Rob Jessee, Office of Right of Way, FDOT (Feb. 10, 2014) (on file with the Committee on Commerce and Tourism).

¹⁷ Section 479.16(15), F.S.

Tourist-Oriented Directional Sign Program

Section 479.262, F.S., establishes a tourist-oriented directional (TOD) sign program for intersections on rural and conventional state, county, or municipal roads in rural areas of critical economic concern (“rural counties identified by criteria and population in s. 288.0656, F.S.”) (RACEC). The program is intended to provide directions to tourist-oriented businesses, services, and activities in RACEC areas, when approved and permitted by county or local government entities.¹⁸

A county or local government that issues permits for a TOD sign program is responsible for sign construction, maintenance, and program operation for roads on the State Highway System and may establish permit fees sufficient to offset associated costs.¹⁹ TOD signs installed on the State Highway System must comply with the requirements of the Manual on Uniform Traffic Control Devices²⁰ (MUTCD) and rules established by the FDOT.²¹

TOD signs may be installed on the State Highway System only after being permitted by the FDOT, and placement of TOD signs is limited to rural conventional roads, as required in the MUTCD.²² TOD signs may *not* be placed within the right-of-way of limited access facilities; within the right-of-way of a limited access facility interchange, regardless of jurisdiction or local road classification; on conventional roads in urban areas; or at interchanges on freeways or expressways.²³

III. Effect of Proposed Changes:

Section 1 amends s. 337.403, F.S., to add another exception to the general rule that a utility owner must bear the cost of removing or relocating a utility. This exception applies if a municipally- or county-owned utility is located in a RACEC and the FDOT determines that the utility is unable, and will not be able within the next 10 years, to pay for the cost of utility work necessitated by an FDOT project on the State Highway System. Under these circumstances, the FDOT may pay the cost of the work performed by the FDOT or its contractors.

This exception “[f]ormalizes current FDOT procedure of promissory note forgiveness for a local utility that meets certain criteria and demonstrates an inability to pay for utility work necessitated by an FDOT project.”²⁴

¹⁸ Section 288.0656(2), F.S., defines a “rural area of critical economic concern” as a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact. “Rural community” is defined to mean a county with a population of 75,000 or fewer, a county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer, or a municipality therein.

¹⁹ Section 479.262(1), F.S.; “Prior to requesting a permit to install TODS on the state highway system, a local government shall have established, by ordinance, criteria for TODS program eligibility including participant qualifications and location regulations.” Rule 14-51.061(3), F.A.C.

²⁰ Adopted by the FDOT pursuant to s. 316.0745(2), F.S.

²¹ Section 479.262(3), F.S.

²² Rule 14-51.063(1) and (2), F.A.C.

²³ *Id.* at (2); s. 2K.01 of Ch. 2K of the MUTCD (2009), available at <http://mutcd.fhwa.dot.gov/pdfs/2009r1r2/part2ithu2n.pdf> (last visited Feb. 10, 2014).

²⁴ FDOT Bill Analysis at 2.

Section 2 amends s. 479.16, F.S., relating to signs for which permits are not required, to:

- Clarify that signs placed on certain objects, such as benches, news racks, and street light poles, which are regulated under s. 337.408, F.S., are exempt from permit requirements under s. 479.16, F.S.;
- Eliminate unnecessary rulemaking authority; and
- Delete the exemption for charter counties from the small business “hardship” sign authorization.

The bill also authorizes the following new permit exemptions:

- Local tourist-oriented business signs within a RACEC, provided that:
 - Signs are not more than eight square feet in size and not more than four feet tall;
 - Signs are located only in rural areas on a facility that does not meet the definition of a limited access facility;
 - Signs are located within two miles of the business location and at least 500 feet apart;
 - Signs are located only in two directions leading to the business;
 - Signs are not located within the right-of-way; and
 - The business is at least four miles from any other business using the exemption and the business does not participate in any other directional sign program;
- Temporary harvest-season signs, provided such signs measure up to 32 square feet, denote only the distance or direction of a farm operation, and are erected at a road junction within the State Highway System; signs may only be erected during the harvest season, not to exceed 4 months;
- “Acknowledgement signs,”²⁵ provided such signs:
 - Are erected upon publicly funded school premises;
 - Relate to a specific public school club, team, or event;
 - Are placed at least 1,000 feet from any other acknowledgement sign on the same side of the roadway; and
 - Limit sponsor information to no more than 100 square feet of the sign; and
- Displays erected upon a sports facility,²⁶ the content of which is directly related to the facility’s activities or where products or services offered on the sports facility property are present, provided such displays are mounted flush to the surface of the sports facility and rely on the building facade for structural support.

The bill prohibits implementation or continuation of the provisions allowing permit exemptions for small business “hardship” signs, local tourist-oriented business signs, harvest-season signs, public school premise “acknowledgement signs,” and sports facility displays if the federal government notifies the FDOT that implementation or continuation will adversely affect the allocation of federal funds to the FDOT. In such an event, the FDOT is required to provide notice to a sign owner that the sign must be removed within 30 days; the FDOT is required to remove the sign if the owner does not remove it and the FDOT’s costs will be assessed against and collected from the owner.

²⁵ The bill defines the term “acknowledgement sign” to mean “a sign that is intended to inform the traveling public that a public school club, team, or event has been sponsored by a person, firm, or other entity.”

²⁶ “Sports facility” is defined to mean “an athletic complex, athletic arena, or athletic stadium, including physically connected parking facilities, which is open to the public and has a permanent installed seating capacity of 15,000 people or more.”

Section 3 amends s. 479.262, F.S., relating to the TOD sign program. The bill expands the program by repealing the restriction for participation in the program to such roads in a RACEC. The bill also expressly states, consistent with Rule 14-51.063, F.A.C., and the MUTCD, that a TOD sign may not be used on roads in urban areas or at interchanges on freeways or expressways.

Section 4 provides the bill takes effect on 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:

In the event the FDOT bears the cost of utility work for municipally- or county-owned utility removal or relocation, and such action avoids delay of a project on the State Highway System, a positive but indeterminate fiscal impact to businesses and private individuals may be realized.

The authorization to use signs without a permit to advertise local tourist-oriented businesses; farm products; public school club, team, or event sponsors; and products and services directly related to a sports facility's activities or offered on the sports facility's property provides greater opportunity to attract people to such businesses or events.

Revision of the TOD sign program to eliminate restriction of the program to signs at intersections in a RACEC provides greater opportunity for business participation in the program. Participants may be subject to permit fees established by local governments.

C. Government Sector Impact:

According to the FDOT, formalizing the FDOT's procedure of promissory note forgiveness for a local utility that meets certain criteria and demonstrates an inability to

pay for utility work necessitated by an FDOT project will result in a negative but indeterminate fiscal impact to the state. The FDOT advises it currently “has approximately \$12 million in promissory notes for utility relocations that under the legislation would be eligible for waivers.” Additionally, the FDOT states the waiver provision will result in an indeterminate reduction in expenditures for local governments that receive a promissory note waiver from the FDOT.²⁷

The bill avoids a potential annual penalty of 10 percent of federal highway funds by authorizing the FDOT to remove signs erected under the additional sign permit exemptions in the event that the Federal Government notifies the FDOT of an adverse impact on the allocation of federal funds.

According to the FDOT, due to the expansion for participation in the TOD sign program, local governments may experience a positive but indeterminate fiscal impact from issuing potentially higher numbers of sign permits for signs located on roads where signs previously were not permitted.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 337.403, 479.16, and 479.262.

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 November 7, 2013:

The CS reflects a technical revision to the language relating to signs placed by local tourist-oriented businesses to rely on an existing definition of “limited access facility,” thereby avoiding the need for the FDOT to incur expenses associated with adopting by rule a definition of “non-limited access facility.”

B. Amendments:

None.

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

²⁷ FDOT Bill Analysis at 4.

²⁸ *Id.*

By the Committee on Transportation; and Senator Grimsley

596-00650-14

2014218c1

1 A bill to be entitled
 2 An act relating to transportation; amending s.
 3 337.403, F.S.; providing an exception for payment of
 4 certain utility work necessitated by a project on the
 5 State Highway System for municipally owned utilities
 6 or county-owned utilities located in rural areas of
 7 critical economic concern and authorizing the
 8 Department of Transportation to pay for such costs
 9 under certain circumstances; amending s. 479.16, F.S.;
 10 exempting certain signs from the provisions of ch.
 11 479, F.S.; exempting from permitting certain signs
 12 placed by tourist-oriented businesses, certain farm
 13 signs placed during harvest seasons, certain
 14 acknowledgement signs on publicly funded school
 15 premises, and certain displays on specific sports
 16 facilities; providing that certain provisions relating
 17 to the regulation of signs may not be implemented or
 18 continued if such actions will adversely impact the
 19 allocation of federal funds to the Department of
 20 Transportation; directing the department to notify a
 21 sign owner that the sign must be removed if federal
 22 funds are adversely impacted; authorizing the
 23 department to remove the sign and assess costs to the
 24 sign owner under certain circumstances; amending s.
 25 479.262, F.S.; clarifying provisions relating to the
 26 tourist-oriented directional sign program; limiting
 27 the placement of such signs to intersections on
 28 certain rural roads; prohibiting such signs in urban
 29 areas or at interchanges on freeways or expressways;

Page 1 of 11

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

596-00650-14

2014218c1

30 providing an effective date.
 31
 32 Be It Enacted by the Legislature of the State of Florida:
 33
 34 Section 1. Subsection (1) of section 337.403, Florida
 35 Statutes, is amended to read:
 36 337.403 Interference caused by relocation of utility;
 37 expenses.—
 38 (1) If a utility that is placed upon, under, over, or along
 39 any public road or publicly owned rail corridor is found by the
 40 authority to be unreasonably interfering in any way with the
 41 convenient, safe, or continuous use, or the maintenance,
 42 improvement, extension, or expansion, of such public road or
 43 publicly owned rail corridor, the utility owner shall, upon 30
 44 days' written notice to the utility or its agent by the
 45 authority, initiate the work necessary to alleviate the
 46 interference at its own expense except as provided in paragraphs
 47 (a)-(h) ~~(a)-(g)~~. The work must be completed within such
 48 reasonable time as stated in the notice or such time as agreed
 49 to by the authority and the utility owner.
 50 (a) If the relocation of utility facilities, as referred to
 51 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
 52 84-627 ~~627~~ of the ~~84th~~ Congress, is necessitated by the
 53 construction of a project on the federal-aid interstate system,
 54 including extensions thereof within urban areas, and the cost of
 55 the project is eligible and approved for reimbursement by the
 56 Federal Government to the extent of 90 percent or more under the
 57 Federal Aid Highway Act, or any amendment thereof, then in that
 58 event the utility owning or operating such facilities shall

Page 2 of 11

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

596-00650-14

2014218c1

59 perform any necessary work upon notice from the department, and
 60 the state shall pay the entire expense properly attributable to
 61 such work after deducting therefrom any increase in the value of
 62 a new facility and any salvage value derived from an old
 63 facility.

64 (b) When a joint agreement between the department and the
 65 utility is executed for utility work to be accomplished as part
 66 of a contract for construction of a transportation facility, the
 67 department may participate in those utility work costs that
 68 exceed the department's official estimate of the cost of the
 69 work by more than 10 percent. The amount of such participation
 70 is shall be limited to the difference between the official
 71 estimate of all the work in the joint agreement plus 10 percent
 72 and the amount awarded for this work in the construction
 73 contract for such work. The department may not participate in
 74 any utility work costs that occur as a result of changes or
 75 additions during the course of the contract.

76 (c) When an agreement between the department and utility is
 77 executed for utility work to be accomplished in advance of a
 78 contract for construction of a transportation facility, the
 79 department may participate in the cost of clearing and grubbing
 80 necessary to perform such work.

81 (d) If the utility facility was initially installed to
 82 exclusively serve the authority or its tenants, or both, the
 83 authority shall bear the costs of the utility work. However, the
 84 authority is not responsible for the cost of utility work
 85 related to any subsequent additions to that facility for the
 86 purpose of serving others.

87 (e) If, under an agreement between a utility and the

Page 3 of 11

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

596-00650-14

2014218c1

88 authority entered into after July 1, 2009, the utility conveys,
 89 subordinates, or relinquishes a compensable property right to
 90 the authority for the purpose of accommodating the acquisition
 91 or use of the right-of-way by the authority, without the
 92 agreement expressly addressing future responsibility for the
 93 cost of necessary utility work, the authority shall bear the
 94 cost of removal or relocation. This paragraph does not impair or
 95 restrict, and may not be used to interpret, the terms of any
 96 such agreement entered into before July 1, 2009.

97 (f) If the utility is an electric facility being relocated
 98 underground in order to enhance vehicular, bicycle, and
 99 pedestrian safety and in which ownership of the electric
 100 facility to be placed underground has been transferred from a
 101 private to a public utility within the past 5 years, the
 102 department shall incur all costs of the necessary utility work.

103 (g) An authority may bear the costs of utility work
 104 required to eliminate an unreasonable interference when the
 105 utility is not able to establish that it has a compensable
 106 property right in the particular property where the utility is
 107 located if:

108 1. The utility was physically located on the particular
 109 property before the authority acquired rights in the property;

110 2. The utility demonstrates that it has a compensable
 111 property right in all adjacent properties along the alignment of
 112 the utility; and

113 3. The information available to the authority does not
 114 establish the relative priorities of the authority's and the
 115 utility's interests in the particular property.

116 (h) If a municipally owned utility or county-owned utility

Page 4 of 11

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

596-00650-14

2014218c1

117 is located in a rural area of critical economic concern, as
 118 defined in s. 288.0656(2), and the department determines that
 119 the utility is unable, and will not be able within the next 10
 120 years, to pay for the cost of utility work necessitated by a
 121 department project on the State Highway System, the department
 122 may pay, in whole or in part, the cost of such utility work
 123 performed by the department or its contractor.

124 Section 2. Section 479.16, Florida Statutes, is amended to
 125 read:

126 479.16 Signs for which permits are not required.—Signs
 127 placed on benches, transit shelters, modular news racks, street
 128 light poles, public pay telephones, and waste receptacles within
 129 the right-of-way, as provided under s. 337.408, are exempt from
 130 this chapter. The following signs are exempt from the
 131 requirement that a permit ~~for a sign~~ be obtained under the
 132 ~~provisions of this chapter but must are required to~~ comply with
 133 ~~the provisions of s. 479.11(4)-(8):~~

134 (1) Signs erected on the premises of an establishment,
 135 which ~~signs~~ consist primarily of the name of the establishment
 136 or ~~which~~ identify the principal or accessory merchandise,
 137 services, activities, or entertainment sold, produced,
 138 manufactured, or furnished on the premises of the establishment
 139 and which comply with the lighting restrictions imposed under
 140 ~~department rule adopted pursuant to s. 479.11(5), or signs owned~~
 141 by a municipality or a county located on the premises of such
 142 municipality or ~~such~~ county which display information regarding
 143 government services, activities, events, or entertainment. For
 144 purposes of this section, the following types of messages shall
 145 not be considered information regarding government services,

Page 5 of 11

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

596-00650-14

2014218c1

146 activities, events, or entertainment:

147 (a) Messages that ~~which~~ specifically reference any
 148 commercial enterprise.

149 (b) Messages that ~~which~~ reference a commercial sponsor of
 150 any event.

151 (c) Personal messages.

152 (d) Political campaign messages.

153

154 If a sign located on the premises of an establishment consists
 155 principally of brand name or trade name advertising and the
 156 merchandise or service is only incidental to the principal
 157 activity, or if the owner of the establishment receives rental
 158 income from the sign, ~~then~~ the sign is not exempt under this
 159 subsection.

160 (2) Signs erected, used, or maintained on a farm by the
 161 owner or lessee of such farm and relating solely to farm
 162 produce, merchandise, service, or entertainment sold, produced,
 163 manufactured, or furnished on such farm.

164 (3) Signs posted or displayed on real property by the owner
 165 or by the authority of the owner, stating that the real property
 166 is for sale or rent. However, if the sign contains any message
 167 not pertaining to the sale or rental of the ~~that~~ real property,
 168 ~~then~~ it is not exempt under this section.

169 (4) Official notices or advertisements posted or displayed
 170 on private property by or under the direction of any public or
 171 court officer in the performance of her or his official or
 172 directed duties, or by trustees under deeds of trust or deeds of
 173 assignment or other similar instruments.

174 (5) Danger or precautionary signs relating to the premises

Page 6 of 11

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

596-00650-14

2014218c1

175 on which they are located; forest fire warning signs erected
 176 under the authority of the Florida Forest Service of the
 177 Department of Agriculture and Consumer Services; and signs,
 178 notices, or symbols erected by the United States Government
 179 under the direction of the United States Forestry Service.

180 (6) Notices of any railroad, bridge, ferry, or other
 181 transportation or transmission company necessary for the
 182 direction or safety of the public.

183 (7) Signs, notices, or symbols for the information of
 184 aviators as to location, directions, and landings and conditions
 185 affecting safety in aviation erected or authorized by the
 186 department.

187 (8) Signs or notices measuring up to 8 square feet in area
 188 which are erected or maintained upon property and state stating
 189 only the name of the owner, lessee, or occupant of the premises
 190 and not exceeding 8 square feet in area.

191 (9) Historical markers erected by duly constituted and
 192 authorized public authorities.

193 (10) Official traffic control signs and markers erected,
 194 caused to be erected, or approved by the department.

195 (11) Signs erected upon property warning the public against
 196 hunting and fishing or trespassing ~~thereon~~.

197 (12) Signs ~~not in excess of up to~~ up to 8 square feet ~~which that~~
 198 are owned by and relate to the facilities and activities of
 199 churches, civic organizations, fraternal organizations,
 200 charitable organizations, or units or agencies of government.

201 ~~(13) Except that signs placed on benches, transit shelters,~~
 202 ~~and waste receptacles as provided for in s. 337.408 are exempt~~
 203 ~~from all provisions of this chapter.~~

596-00650-14

2014218c1

204 ~~(13)-(14)~~ Signs relating exclusively to political campaigns.

205 ~~(14)-(15)~~ Signs measuring up to not in excess of 16 square
 206 feet placed at a road junction with the State Highway System
 207 denoting only the distance or direction of a residence or farm
 208 operation, or, outside an incorporated in a rural area where a
 209 hardship is created because a small business is not visible from
 210 the road junction with the State Highway System, one sign
 211 measuring up to not in excess of 16 square feet, denoting only
 212 the name of the business and the distance and direction to the
 213 business. ~~The small-business-sign provision of this subsection~~
 214 ~~does not apply to charter counties and may not be implemented if~~
 215 ~~the Federal Government notifies the department that~~
 216 ~~implementation will adversely affect the allocation of federal~~
 217 ~~funds to the department.~~

218 (15) Signs placed by a local tourist-oriented business
 219 located within a rural area of critical economic concern as
 220 defined under s. 288.0656(2) which are:

221 (a) Not more than 8 square feet in size or more than 4 feet
 222 in height;

223 (b) Located only in rural areas on a facility that does not
 224 meet the definition of a limited access facility as defined by
 225 department rule;

226 (c) Located within 2 miles of the business location and at
 227 least 500 feet apart;

228 (d) Located only in two directions leading to the business;
 229 and

230 (e) Not located within the road right-of-way.

231
 232 A business placing such signs must be at least 4 miles from any

596-00650-14

2014218c1

233 other business using this exemption and may not participate in
 234 any other directional signage program by the department.

235 (16) Signs measuring up to 32 square feet denoting only the
 236 distance or direction of a farm operation which are erected at a
 237 road junction with the State Highway System, but only during the
 238 harvest season of the farm operation for a period not to exceed
 239 4 months.

240 (17) Acknowledgement signs erected upon publicly funded
 241 school premises which relate to a specific public school club,
 242 team, or event which are placed at least 1,000 feet from any
 243 other acknowledgement sign on the same side of the roadway. The
 244 sponsor information on an acknowledgement sign may constitute no
 245 more than 100 square feet of the sign. For purposes of this
 246 subsection, the term "acknowledgement sign" means a sign that is
 247 intended to inform the traveling public that a public school
 248 club, team, or event has been sponsored by a person, firm, or
 249 other entity.

250 (18) Displays erected upon a sports facility the content of
 251 which is directly related to the facility's activities or where
 252 products or services offered on the sports facility property are
 253 present. Displays must be mounted flush to the surface of the
 254 sports facility and must rely upon the building facade for
 255 structural support. For purposes of this subsection, the term
 256 "sports facility" means an athletic complex, athletic arena, or
 257 athletic stadium, including physically connected parking
 258 facilities, which is open to the public and has a permanent
 259 installed seating capacity of 15,000 people or more.

260 The exemptions in subsections (14)-(18) may not be implemented
 261

596-00650-14

2014218c1

262 or continued if the Federal Government notifies the department
 263 that implementation or continuation will adversely impact the
 264 allocation of federal funds to the department. If the exemptions
 265 in subsections (14)-(18) are not implemented or continued due to
 266 notification from the Federal Government that the allocation of
 267 federal funds to the department will be adversely impacted, the
 268 department shall provide notice to the sign owner that the sign
 269 must be removed within 30 days. If the sign is not removed
 270 within 30 days after receipt of the notice by the sign owner,
 271 the department may remove the sign, and the costs incurred in
 272 connection with the sign removal shall be assessed against and
 273 collected from the sign owner.

274 Section 3. Section 479.262, Florida Statutes, is amended to
 275 read:

276 479.262 Tourist-oriented directional sign program.—

277 (1) A tourist-oriented directional sign program to provide
 278 directions to rural tourist-oriented businesses, services, and
 279 activities may be established for intersections on rural and
 280 conventional state, county, or municipal roads only ~~in rural~~
 281 ~~counties identified by criteria and population in s. 288.0656~~
 282 when approved and permitted by county or local government
 283 entities within their respective jurisdictional areas ~~at~~
 284 ~~intersections on rural and conventional state, county, or~~
 285 ~~municipal roads~~. A county or local government ~~that which~~ issues
 286 permits for a tourist-oriented directional sign program ~~is shall~~
 287 ~~be~~ responsible for sign construction, maintenance, and program
 288 operation in compliance with subsection (3) for roads on the
 289 state highway system and may establish permit fees sufficient to
 290 offset associated costs. A tourist-oriented directional sign may

596-00650-14

2014218c1

291 not be used on roads in urban areas or at interchanges on
292 freeways or expressways.

293 (2) This section does not create a proprietary or
294 compensable interest in any tourist-oriented directional sign
295 site or location for any permittee on any rural and conventional
296 state, county, or municipal ~~road roads~~. The department or the
297 permitting entity may terminate permits or change locations of
298 tourist-oriented directional sign sites as determined necessary
299 for construction or improvement of transportation facilities or
300 for improved traffic control or safety.

301 (3) Tourist-oriented directional signs installed on the
302 state highway system must ~~shall~~ comply with the requirements of
303 the federal Manual on Uniform Traffic Control Devices and rules
304 established by the department. The department may adopt rules to
305 establish requirements for participant qualification,
306 construction standards, location of sign sites, and other
307 criteria necessary to implement this program.

308 Section 4. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

SELECT COMMITTEES:

Select Committee on Indian River Lagoon and Lake Okeechobee Basin
Select Committee on Patient Protection and Affordable Care Act

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining

SENATOR DENISE GRIMSLEY

21st District

February 17, 2014

Senator Nancy Deter, Chair
Committee on Commerce and Tourism
404 S. Monroe Street
Tallahassee, FL 32399-1100

RE: SB 218, Transportation

Dear Chair Deter,

I respectfully request that you permit my legislative aide, Marty Mielke, to present the above referenced bill in committee on Monday, February 17. I have a conflict with another committee at that time, and unable to present the bill.

Sincerely,

A handwritten signature in black ink that reads "Denise Grimsley".

Denise Grimsley
Senator, District 21

Cc: Jennifer Hrdlicka, Staff Director
Patty Blackburn, Committee Administrative Assistant

REPLY TO:

- 205 South Commerce Avenue, Suite A, Sebring, Florida 33870 (863) 386-6016
- 212 East Stuart Avenue, Lake Wales, Florida 33853
- 306 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

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 Commerce and Tourism

BILL: SB 496

INTRODUCER: Senator Simpson

SUBJECT: Warranty Associations

DATE: February 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Askey</u>	<u>Hrdlicka</u>	<u>CM</u>	Pre-meeting

I. Summary:

SB 496 allows for the electronic delivery of warranty association contracts as defined in ch. 634, F.S. The bill allows warranty associations an additional exemption with regards to writing ratio requirements. The bill eliminates a current prohibition that bans affiliations between contractual liability insurers and warranty associations. The bill deletes an exemption for writing ratio requirements that applies to nationally traded companies that sell warranties in other states besides Florida.

II. Present Situation:

Chapter 634, F.S., governs the regulation of warranty associations. Warranty associations include motor vehicle service agreement companies,¹ home warranty associations,² and service warranty associations.³ Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulations (OIR). The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. The OIR is not, however, required to approve rates for such warranties.

¹ Part I, ch. 634, F.S.

² Part II, ch. 634, F.S.

³ Part III, ch. 634, F.S.

Delivery of Service Agreements and Warranties

Section 634.121(6), F.S., requires every motor vehicle service agreement to be mailed or delivered to the purchaser within 45 days after the purchase of the agreement.

Section 634.312(2), F.S., requires every home warranty to be mailed or delivered to the purchaser within 45 days after the effective date of coverage. The delivery required by current law is typically sent via US mail or hand delivered. Service warranties currently do not have any delivery requirements in law.

Applicability of Federal and State Law Relating to Electronic Transactions

The federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.⁴ E-SIGN provides that a contract formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. E-SIGN requires consumer disclosure and consent to electronic records in certain instances, however, before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

E-SIGN allows state law to preempt the E-SIGN law in certain circumstances. State law addressing electronic transmission can preempt E-SIGN if the state law is an enactment of the Uniform Electronic Transactions Act (UETA) as adopted by the National Conference of Commissioners on Uniform State Laws. Alternatively, a state law that is not an enactment of UETA, but is not inconsistent with E-SIGN, and does not give greater legal status or effect to a specific form of technology or signature can preempt E-SIGN.⁵ Florida adopted the substantive provisions of UETA in 2000, codified in s. 668.50, F.S., Florida's Uniform Electronic Transaction Act (FUETA).⁶ FUETA applies to electronic records and electronic signatures relating to a transaction and has limited exceptions.

Although UETA and E-SIGN overlap in some areas, they differ on some consumer protection issues. E-SIGN focuses on regulating the manner of consent to deal electronically, while UETA

⁴ Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, (2000). 15 U.S.C. ch. 96.

⁵ 15 U.S.C. s. 7002.

⁶ Chapter 2000-164, s. 1, L.O.F.; see *Final Staff Analysis for CS/CS/SB 1334* by the House Committee on Utilities & Communications, 10, available at

http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334 (last visited February 12, 2014) (indicating that "the bill is identical to the act recommended by the National Commissioners for Uniform State Laws except for provisions that were added to conform to Florida law and provisions added to subsection (11) requiring a first time notary to complete certain training requirements."); Uniform Electronic Transactions Act (1999), available at

http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta_final_99.pdf (last visited February 12, 2014);

National Conference of State Legislatures, *Uniform Electronic Transactions Act*, available at

<http://www.ncsl.org/research/telecommunications-and-information-technology/uniform-electronic-transactions-acts.aspx> (last visited February 12, 2014). Although FUETA has been amended five times since adoption in 2000, none of the amendments were substantive.

focuses on how the parties are to comply with state consumer protection laws.⁷ By adopting the official version of UETA, states can modify, limit, or supersede some E-SIGN provisions, including its consumer protection issues, which includes E-SIGN's requirement of consumer disclosure and affirmative consent for electronic records.⁸

Financial Requirements for Service Warranty Associations

Section 634.406, F.S., establishes the financial requirements, ratios, and limitations on service warranty associations. The law requires a 7-to-1 gross written premium to net assets ratio be maintained by warrantors and warranty sellers whom make up an association. "Warrantor" means any person engaged in the sale of service warranties and deriving not more than 50 percent of its gross income from the sale of service warranties."⁹ "Warranty seller" means any person engaged in the sale of service warranties and deriving more than 50 percent of its gross income from the sale of service warranties."¹⁰ Section 634.406(5), F.S., states no warranty seller may allow its gross written premiums in force to exceed a 7-to-1 ratio to net assets.

A warrantor who is also licensed under part I (Motor Vehicle Service Agreement) of ch. 634, F.S., can exceed the required ratio of gross written premium to net assets limitation only if it meets all of the following:

- Maintains net assets of at least \$2.5 million;
- Uses a contractual liability insurance policy approved by the OIR which reimburses the service warranty association for 100 percent of its claims liability; and
- Works with an insurer issuing the contractual liability insurance policy that:
 - Maintains a policyholder surplus of at least \$100 million; and
 - Is rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the OIR.¹¹

Additionally, any warranty association not licensed under any other part of ch. 634, F.S., can exceed the required ratio of gross written premium to net assets limitation only if the association meets all of the following:

- Maintains net assets of at least \$750,000;
- Uses a contractual liability insurance policy approved by the OIR which reimburses the service warranty association for 100 percent of its claims liability; and
- Works with an insurer issuing the contractual liability insurance policy that:
 - Maintains a policyholder surplus of at least \$100 million;
 - Is rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the OIR;

⁷ Fry, Patricia Bumfield, *A Preliminary Analysis of Federal and State Electronic Commerce Laws*, available at <http://uniformlaws.org/Narrative.aspx?title=UETA%20and%20Preemption%20Article> (last viewed February 11, 2014).

⁸ National Conference of State Legislatures, *Uniform Electronic Transactions Act*, available at <http://www.ncsl.org/research/telecommunications-and-information-technology/uniform-electronic-transactions-acts.aspx> (last visited February 12, 2014).

⁹ Section 634.401(15), F.S.

¹⁰ Section 634.401(16), F.S.

¹¹ Section 634.406(4), F.S.

- Is not affiliated with the warranty association; and
- Provides with the warranty association's quarterly and annual reports a statement certifying that the gross written premiums are covered under the contractual liability policy, whether or not it has been reported.¹²

III. Effect of Proposed Changes:

Electronic Delivery of Service Agreements and Warranties

The bill allows the electronic delivery of motor vehicle service agreements (Section 1 amending s. 634.121(6), F.S.) and home warranties (Section 2 amending s. 634.312(2), F.S.). The bill also creates delivery requirements for service warranty agreements that are the same requirements, including by US mail, for motor vehicle service agreements and home warranties (Section 4 amending s. 634.414(4), F.S.). Under the bill, the parameters for delivery of motor vehicle service agreements, home warranties, and service warranties are consistent and the same.

The bill specifies electronic transmission of motor vehicle service agreements, home warranty agreements, and service warranty agreements constitutes delivery of the agreement to the purchaser. All electronic transmissions of agreements must include a notice to the purchaser indicating the purchaser's right to receive a paper copy of the agreement. If the purchaser notifies the company that he or she does not agree to an electronic transmission of the agreement, a paper copy must be sent via US mail to the purchaser.

Such provisions allowing electronic delivery of agreements without purchaser consent are likely permitted under FUETA.

Financial Requirements for Service Warranty Associations

The bill modifies the existing exemption for service warranty associations (Section 3 amending s. 634.406(6), F.S.) from the required 7-to-1 ratio provided under s. 634.406(6), F.S. Under the bill, a service warranty association also licensed in any other part of ch. 634, F.S.,¹³ can be exempt from the required ratio for the service warranty premiums written under part III, ch. 634, F.S., if the association uses a contractual liability insurance policy approved by OIR that either (1) reimburses the association for 100 percent of its claims liability and is issued by an insurer that maintains a policyholder surplus of at least \$100 million, or (2) complies with the requirements under s. 634.406(3), F.S., related to required contractual liability policy provisions, and is issued by an insurer that maintains a policyholder surplus of at least \$200 million. The bill repeals the current prohibition on affiliations between contractual liability insurers and warranty associations. As provided under current law, the association still must maintain net assets of at least \$750,000 and work with an insurer that is rated "A" or higher by A.M. Best Company or an approved equivalent rating service and that provides the required quarterly and annual statements.

¹² Section 634.406(6), F.S.

¹³ This allows another option for exemption from the required 7-to-1 gross written premium to net assets ratio for warrantors who are also licensed under part I (Motor Vehicle Service Agreement) of ch. 634, F.S.

Additionally, the bill repeals s. 634.406(7), F.S., which provides an exemption for writing ratio requirements that applies to nationally traded companies issuing in other states besides Florida. The OIR indicates a majority of these national companies choose to receive their exemption through s. 634.406(6), F.S., and those effected by the change in the bill will be able to do the same.¹⁴

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:

Warranty associations will save on printing and mailing costs for each service warranty that is delivered electronically. Insurers issuing contractual liability insurance policies will be allowed to hold affiliations with the warranty associations they insure.

C. Government Sector Impact:

The Office of Insurance Regulation indicated no impact in its bill analysis.¹⁵

VI. Technical Deficiencies:

The OIR recommended in its bill analysis that a reference to “quarterly reports” on line 76 be struck. The OIR reported that service warranty associations are no longer required to file quarterly reports.¹⁶

¹⁴ Conversation with Richard Koon, Deputy Commissioner of Property and Casualty, Florida Office of Insurance Regulation (February 11, 2014).

¹⁵ Office of Insurance Regulation, *Analysis SB 496* (January 30, 2014).

¹⁶ Office of Insurance Regulation, *Analysis SB 496* (January 30, 2014).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 634.121, 634.312, 634.406, and 634.414.

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 Simpson

18-00658A-14

2014496__

A bill to be entitled

An act relating to warranty associations; amending ss. 634.121 and 634.312, F.S.; authorizing electronic transmission of service agreements and home warranties; providing requirements for electronic transmission; providing notice requirements; amending s. 634.406, F.S.; revising criteria authorizing premiums of certain service warranty associations to exceed their specified net assets limitations; revising requirements relating to contractual liability policies that insure warranty associations; amending s. 634.414, F.S.; providing requirements for the delivery of service warranty contracts; providing notice requirements; providing an effective date.

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

Section 1. Subsection (6) of section 634.121, Florida Statutes, is amended to read:

634.121 Forms, required procedures, provisions.—

(6) ~~A~~ Each service agreement ~~that, which~~ includes a copy of the application form, ~~must be mailed, or delivered, or~~ electronically transmitted to the agreement holder within 45 days after the date of purchase. Electronic transmission of a service agreement constitutes delivery to the agreement holder. The electronic transmission must notify the agreement holder of his or her right to receive a paper copy of the service agreement via United States mail rather than electronic transmission. If the agreement holder communicates to the

Page 1 of 6

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

18-00658A-14

2014496__

service agreement company electronically or in writing that he or she does not consent to receipt by electronic transmission, a paper copy of the service agreement shall be provided to the agreement holder.

Section 2. Subsection (2) of section 634.312, Florida Statutes, is amended to read:

634.312 Forms; required provisions and procedures.—

(2) Subject to the insurer's or home warranty association's requirement as to payment of premium, a every home warranty must shall be mailed, or delivered, or electronically transmitted to the warranty holder within not later than 45 days after the effectuation of coverage, and the application is part of the warranty contract document. Electronic transmission of a home warranty constitutes delivery to the warranty holder. The electronic transmission must notify the warranty holder of his or her right to receive a paper copy of the warranty via United States mail rather than electronic transmission. If the warranty holder communicates to the home warranty association electronically or in writing that he or she does not consent to receipt by electronic transmission, a paper copy of the home warranty shall be provided to the warranty holder.

Section 3. Subsections (6) and (7) of section 634.406, Florida Statutes, are amended to read:

634.406 Financial requirements.—

(6) An association ~~that which~~ holds a license under this part ~~and which does not hold any other license under this chapter~~ may allow its premiums for service warranties written under this part to exceed the ratio to net assets limitations of this section if the association meets all of the following:

Page 2 of 6

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

18-00658A-14

2014496__

- 59 (a) Maintains net assets of at least \$750,000.
- 60 (b) ~~Uses~~ Utilizes a contractual liability insurance policy
- 61 approved by the office ~~that; which~~
- 62 1. Reimburses the service warranty association for 100
- 63 percent of its claims liability and is issued by an insurer that
- 64 maintains a policyholder surplus of at least \$100 million; or
- 65 2. Complies with subsection (3) and is issued by an insurer
- 66 that maintains a policyholder surplus of at least \$200 million.
- 67 (c) The insurer issuing the contractual liability insurance
- 68 policy:
- 69 ~~1. Maintains a policyholder surplus of at least \$100~~
- 70 ~~million.~~
- 71 ~~1.2.~~ Is rated "A" or higher by A.M. Best Company or an
- 72 equivalent rating by another national rating service acceptable
- 73 to the office; ~~and-~~
- 74 ~~3. Is in no way affiliated with the warranty association.~~
- 75 ~~2.4.~~ In conjunction with the warranty association's filing
- 76 of the quarterly and annual reports, provides, on a form
- 77 prescribed by the commission, a statement certifying the gross
- 78 written premiums in force reported by the warranty association
- 79 and a statement that all of the warranty association's gross
- 80 written premium in force is covered under the contractual
- 81 liability policy, regardless of whether ~~or not~~ it has been
- 82 reported.
- 83 ~~(7) A contractual liability policy must insure 100 percent~~
- 84 ~~of an association's claims exposure under all of the~~
- 85 ~~association's service warranty contracts, wherever written,~~
- 86 ~~unless all of the following are satisfied:~~
- 87 ~~(a) The contractual liability policy contains a clause that~~

Page 3 of 6

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

18-00658A-14

2014496__

- 88 ~~specifically names the service warranty contract holders as sole~~
- 89 ~~beneficiaries of the contractual liability policy and claims are~~
- 90 ~~paid directly to the person making a claim under the contract;~~
- 91 ~~(b) The contractual liability policy meets all other~~
- 92 ~~requirements of this part, including subsection (3) of this~~
- 93 ~~section, which are not inconsistent with this subsection;~~
- 94 ~~(c) The association has been in existence for at least 5~~
- 95 ~~years or the association is a wholly owned subsidiary of a~~
- 96 ~~corporation that has been in existence and has been licensed as~~
- 97 ~~a service warranty association in the state for at least 5~~
- 98 ~~years, and:~~
- 99 1. Is listed and traded on a recognized stock exchange; is
- 100 listed in NASDAQ (National Association of Security Dealers
- 101 Automated Quotation system) and publicly traded in the over-the-
- 102 counter securities market; is required to file either of Form
- 103 10-K, Form 100, or Form 20-C with the United States Securities
- 104 and Exchange Commission; or has American Depository Receipts
- 105 listed on a recognized stock exchange and publicly traded or is
- 106 the wholly owned subsidiary of a corporation that is listed and
- 107 traded on a recognized stock exchange; is listed in NASDAQ
- 108 (National Association of Security Dealers Automated Quotation
- 109 system) and publicly traded in the over-the-counter securities
- 110 market; is required to file Form 10-K, Form 100, or Form 20-C
- 111 with the United States Securities and Exchange Commission; or
- 112 has American Depository Receipts listed on a recognized stock
- 113 exchange and is publicly traded;
- 114 2. Maintains outstanding debt obligations, if any, rated in
- 115 the top four rating categories by a recognized rating service;
- 116 3. Has and maintains at all times a minimum net worth of

Page 4 of 6

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

18-00658A-14 2014496__

117 ~~not less than \$10 million as evidenced by audited financial~~
 118 ~~statements prepared by an independent certified public~~
 119 ~~accountant in accordance with generally accepted accounting~~
 120 ~~principles and submitted to the office annually; and~~
 121 ~~4. Is authorized to do business in this state; and~~
 122 ~~(d) The insurer issuing the contractual liability policy;~~
 123 ~~1. Maintains and has maintained for the preceding 5 years,~~
 124 ~~policyholder surplus of at least \$100 million and is rated "A"~~
 125 ~~or higher by A.M. Best Company or has an equivalent rating by~~
 126 ~~another rating company acceptable to the office;~~
 127 ~~2. Holds a certificate of authority to do business in this~~
 128 ~~state and is approved to write this type of coverage; and~~
 129 ~~3. Acknowledges to the office quarterly that it insures all~~
 130 ~~of the association's claims exposure under contracts delivered~~
 131 ~~in this state.~~
 132
 133 ~~If all the preceding conditions are satisfied, then the scope of~~
 134 ~~coverage under a contractual liability policy shall not be~~
 135 ~~required to exceed an association's claims exposure under~~
 136 ~~service warranty contracts delivered in this state.~~
 137 Section 4. Subsection (4) is added to section 634.414,
 138 Florida Statutes, to read:
 139 634.414 Forms; required provisions.—
 140 (4) A service warranty contract must be mailed, delivered,
 141 or electronically transmitted to the warranty holder within 45
 142 days after the date of purchase. Electronic transmission of a
 143 contract constitutes delivery to the warranty holder. The
 144 electronic transmission must notify the warranty holder of his
 145 or her right to receive a paper copy of the contract via United

Page 5 of 6

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

18-00658A-14 2014496__

146 States mail rather than electronic transmission. If the warranty
 147 holder communicates to the service warranty company
 148 electronically or in writing that he or she does not consent to
 149 receipt by electronic transmission, a paper copy of the contract
 150 shall be provided to the warranty holder.
 151 Section 5. This act shall take effect July 1, 2014.

Page 6 of 6

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR WILTON SIMPSON

18th District

COMMITTEES:

Community Affairs, *Chair*
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Commerce and Tourism
Communications, Energy, and Public Utilities
Environmental Preservation and Conservation

JOINT COMMITTEE:

Joint Legislative Auditing Committee

February 5, 2014

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

Senator Detert,

Please place Senate Bill 496 relating to warranty associations, on the next Committee on
Commerce and Tourism agenda.

Please contact my office with any questions.

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson
Senator, 18th District

REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

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 Commerce and Tourism

BILL: SB 500

INTRODUCER: Senator Ring

SUBJECT: Sales, Storage, and Use Tax

DATE: February 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	Pre-meeting
2.			AFT	
3.			AP	

I. Summary:

SB 500 amends s. 212.05(1)(i), F.S., to exempt charges for security system services from sales tax.

The Revenue Estimating Conference estimates that the bill will decrease revenues deposited into the General Revenue Fund by \$56.5 million in Fiscal Year 2014-15, with a negative \$63.3 million recurring impact to General Revenue. In addition, the bill will decrease revenues to local governments by \$12.7 million in Fiscal Year 2014-15, with a negative \$14.3 million recurring impact to local governments.

II. Present Situation:

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Florida imposes a 6 percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida.¹ The statutes currently provide more than 200 different exemptions.²

Additionally, Florida counties are authorized to levy a discretionary sales surtax on all transactions subject to the state sales and use tax when the goods or services are sold, or delivered into the county.³ Currently, the maximum surtax actually imposed is 1.5 percent in several counties; however, the theoretical maximum rate ranges between 2 percent and 3.5 percent, depending on the specifics of each individual county.⁴ The surtax does not apply to a

¹ See ss. 212.05 and 212.06, F.S.

² For a list of exemptions and history, see Florida Revenue Estimating Conference (REC), 2013 Florida Tax Handbook.

³ Sections 212.054 and 212.055, F.S.

⁴ See Florida's Discretionary Sales Surtax, Department of Revenue, available at <http://dor.myflorida.com/dor/taxes/discretionary.html> (last visited 2/7/2014).

sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service, rentals of real property, or transient rentals.

Charges for detective, burglar protection, and other protection services are subject to sales tax.⁵ Specifically, charges for services under the following North American Industry Classification System (NAICS) codes are taxable:⁶

- 561611 Investigation Services: “This U.S. industry comprises establishments primarily engaged in providing investigation and detective services.”
- 561612 Security Guards and Patrol Services: “This U.S. industry comprises establishments primarily engaged in providing guard and patrol services, such as bodyguard, guard dog, and parking security services.”
- 561613 Armored Car Services: “This U.S. industry comprises establishments primarily engaged in picking up and delivering money, receipts, or other valuable items. These establishments maintain personnel and equipment to protect such properties while in transit.”
- 561621 Security Systems Services (except Locksmiths): “This U.S. industry comprises establishments primarily engaged in (1) selling security alarm systems, such as burglar and fire alarms, along with installation, repair, or monitoring services or (2) remote monitoring of electronic security alarm systems.”

The Department of Revenue (DOR) defines detective, burglar protection, and other protection services by rule as

those services which are rendered to minimize or prevent loss or damage to life, limb, or property and are of a kind typically performed by security or alarm system companies, or are those investigative services which are rendered to obtain evidence or other information for legal, business, employment, or personal purposes of a kind typically performed by detective or investigative agencies.⁷

Charges for these services are exempt from the tax when the services are:

- Performed within this state but used outside this state by the purchaser, and
- When the purchaser’s primary benefit of the services is outside this state.⁸

The seller must maintain a monthly log documenting any exempt transaction.⁹

Charges for nonresidential cleaning, excluding any cleaning of the interior of transportation equipment, are subject to sales tax.¹⁰ “Janitorial services” under NAICS code 561720 include

⁵ Section 212.05(1)(i), F.S. Generally, the tax does not apply to work of law enforcement officers.

⁶ U.S. Census Bureau, North American Industry Classification System (NAICS), available at <http://www.census.gov/eos/www/naics/> (last visited 2/7/2014). For purposes of the statute, the NAICS classification are those as published in 2007 by the Office of Management and Budget, Executive Office of the President.

⁷ Rule 12A-1.0092, F.A.C. For examples of services, see DOR, Tax Information Publication: Sales and Use Tax on Detective, Burglar Protection and Other Protection Services: What Service Providers Need to Know (August 2010), available at <http://dor.myflorida.com/dor/forms/2010/gt800018.pdf> (last visited 2/7/2014).

⁸ Section 212.05(1)(i)a.3., F.S., and Rule 12A-1.0092(2)(f), F.A.C. See also DOR, Tax Information Publication above.

⁹ Section 212.05(1)(i)a.5., F.S.

¹⁰ Section 212.05(1)(i), F.S. For examples of services, see DOR, Tax Information Publication: Sales and Use Tax on Cleaning Services (August 2010), available at <http://dor.myflorida.com/dor/forms/current/gt800015.pdf> (last visited 2/11/2014).

residential cleaning services, however, under current law residential cleaning services are not taxable.¹¹

III. Effect of Proposed Changes:

SB 500 amends s. 212.05(1)(i), F.S., to exempt charges for security system services from sales tax.

The bill updates references to services to reflect the industry title for the NAICS codes listed in the statute and updates the NAICS codes to those published in 2012 U.S. NAICS Manual.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

Subsection (b) of the provision prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by two-thirds of the membership of each chamber.

Subsection (c) of the provision prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce the percentage of a state tax shared with counties and municipalities. The exception to this prohibition is if the Legislature passes such a law by 2/3 of the membership of each chamber.

Subsection (d) provides an exemption from the prohibitions. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 are exempt (April 1, 2013, statewide population estimate was about 19.3 million).¹²

The Revenue Estimating Conference estimated that the provisions of the bill will decrease revenues to local governments by \$12.7 million in Fiscal Year 2014-15, with a negative \$14.3 million recurring impact to local governments.¹³

¹¹ Rule 12A-1.0091(1)(b), F.A.C.

¹² Office of Economic and Demographic Research, Florida Population Estimates for Counties and Municipalities, April 1, 2013, available at http://edr.state.fl.us/Content/population-demographics/data/2013_Pop_Estimates.pdf (last visited 2/7/2014).

¹³ Office of Economic and Demographic Research, Revenue Estimating Conference, Impact on SB 500 (February 14, 2014).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

The Revenue Estimating Conference estimates that the bill will decrease revenues deposited into the General Revenue Fund by \$56.5 million in Fiscal Year 2014-15, with a negative \$63.3 million recurring impact to General Revenue. In addition, the bill will decrease revenues to local governments by \$12.7 million in Fiscal Year 2014-15, with a negative \$14.3 million recurring impact to local governments.¹⁴

B. Private Sector Impact:

Anyone providing security system services will not have to collect and remit sales tax on charges for those services; customers will not have to pay tax on such services.

C. Government Sector Impact:

According to DOR, the bill will have an insignificant operational impact on the agency.¹⁵

VI. Technical Deficiencies:

The bill updates the reference to “cleaning services” to “janitorial services.” By doing so the bill expands janitorial services to include residential cleaning, which subjects such services to sales tax.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 212.05, 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.

¹⁴ Office of Economic and Demographic Research, Revenue Estimating Conference, Impact on SB 500 (February 14, 2014).

¹⁵ DOR, Bill Analysis: SB 500 (January 10, 2014) (on file with the Senate Commerce and Tourism Committee).

B. Amendments:

None.

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



859620

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

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

Senate Amendment

Delete line 50

and insert:

b. Nonresidential janitorial services ~~cleaning~~, excluding

By Senator Ring

29-00673A-14

2014500__

A bill to be entitled

An act relating to the sales, storage, and use tax; amending s. 212.05, F.S.; removing the tax from security systems services; making technical corrections; providing an effective date.

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

Section 1. Paragraph (i) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(i)1. At the rate of 6 percent on charges for all:

a. Investigative services ~~Detective, security guard and patrol services burglar protection~~, and armored car services, ~~other protection services~~ (NAICS National Numbers 561611, 561612, and 561613, ~~and 561621~~). A ~~Any~~ law enforcement officer, as defined in s. 943.10, who is performing approved duties as determined by his or her local law enforcement agency in his or

Page 1 of 4

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

29-00673A-14

2014500__

her capacity as a law enforcement officer, and who is subject to the direct and immediate command of the ~~his or her~~ law enforcement agency, and wearing a ~~in the~~ law enforcement officer's uniform ~~as~~ authorized by the ~~his or her~~ law enforcement agency, is performing law enforcement and public safety services and is not performing investigative services ~~detective, security guard and patrol services burglar protection~~, or armored car ~~other protective~~ services, if the law enforcement officer is performing his or her approved duties in a geographical area in which the law enforcement officer has arrest jurisdiction. Such law enforcement and public safety services are not subject to tax irrespective of whether the duty is characterized as "extra duty," "off-duty," or "secondary employment," and irrespective of whether the officer is paid directly or through the officer's agency by an outside source. The term "law enforcement officer" includes a full-time or part-time law enforcement officer ~~officers~~, and an ~~any~~ auxiliary law enforcement officer if they, ~~when such~~ auxiliary law enforcement officer is working under the direct supervision of a full-time or part-time law enforcement officer.

b. Janitorial services ~~Nonresidential cleaning~~, excluding cleaning of the interiors of transportation equipment, and nonresidential building exterminating and pest control services, (NAICS National Numbers 561710 and 561720).

2. As used in this paragraph, "NAICS" means those classifications contained in the North American Industry Classification System, as published in 2012 ~~2007~~ by the Office of Management and Budget, Executive Office of the President.

3. Charges for investigative services ~~detective, security~~

Page 2 of 4

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

29-00673A-14

2014500__

59 guard and patrol services ~~burglar protection~~, and armored car
 60 ~~other protection security~~ services performed in this state but
 61 used outside this state are exempt from taxation. Charges for
 62 investigative services ~~detective~~, security guard and patrol
 63 ~~services burglar protection~~, and armored car other protection
 64 ~~security~~ services performed outside this state and used in this
 65 state are subject to tax.

66 4. If a transaction involves both the sale or use of a
 67 service taxable under this paragraph and the sale or use of a
 68 service or any other item not taxable under this chapter, the
 69 consideration paid must be separately identified and stated with
 70 respect to the taxable and exempt portions of the transaction or
 71 the entire transaction is ~~shall be~~ presumed taxable. The burden
 72 is ~~shall be~~ on the seller of the service or the purchaser of the
 73 service, as ~~whichever~~ applicable, to overcome this presumption
 74 by providing documentary evidence as to which portion of the
 75 transaction is exempt from tax. The department may ~~is authorized~~
 76 ~~to~~ adjust the amount of consideration identified as the taxable
 77 and exempt portions of the transaction; however, a determination
 78 that the taxable and exempt portions are inaccurately stated and
 79 that the adjustment is applicable must be supported by
 80 substantial competent evidence.

81 5. Each seller of services subject to sales tax pursuant to
 82 this paragraph shall maintain a monthly log showing each
 83 transaction for which sales tax was not collected because the
 84 services meet the requirements of subparagraph 3. for out-of-
 85 state use. The log must identify the purchaser's name, location
 86 and mailing address, and federal employer identification number,
 87 if a business, or ~~the~~ social security number, if an individual,

Page 3 of 4

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

29-00673A-14

2014500__

88 the service sold, the price of the service, the date of sale,
 89 the reason for the exemption, and the sales invoice number. The
 90 monthly log shall be maintained pursuant to the same
 91 requirements and subject to the same penalties imposed for the
 92 keeping of similar records pursuant to this chapter.

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

Page 4 of 4

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and
Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEES:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR JEREMY RING

29th District

December 18, 2013

Honorable Senator Nancy Detert
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairwoman Detert,

I am writing to respectfully request your cooperation in placing Senate Bill 500, relating to sales, storage, and use tax, on the Committee on Commerce and Tourism agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

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

Jeremy Ring
Senator District 29

cc: Jennifer Hrdlicka

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

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 Commerce and Tourism

BILL: SB 654

INTRODUCER: Senators Clemens and Richter

SUBJECT: Business Organizations

DATE: February 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 654 amends the Florida Business Corporation Act to allow for the creation of two new forms of corporate enterprise: the social purpose corporation and the benefit corporation. These new entities will allow businesses to engage in societal benefit programs that may not involve or satisfy the traditional corporate norm of profit maximization. Key elements of the social purpose corporation and the benefit corporation are:

- A social purpose corporation must pursue one or more narrowly identified public benefits.
- A benefit corporation must pursue a general public benefit, which is a broad purpose intended to encompass a broad range of social and environmental factors that are impacted by the corporation.
- The corporation's directors and officers are required to consider the effects of any corporate action or inaction upon the benefit goals of the corporation.
- Like directors and officers of all corporations, the new entities' directors and officers are immune from personal liability for failure to pursue or achieve the corporation's benefit goals, but they are subject to duty of care and fiduciary principles applicable to all corporate directors and officers.
- Benefit enforcement judicial proceedings may be brought by a shareholder or certain individuals for claims that the directors or officers have failed to satisfy their obligations in making corporate decisions.
- The corporation must provide an annual benefit report to all its shareholders describing and assessing the efforts made during the year to achieve the corporation's benefit goals.

The bill also specifies which differences in the name of certain business entities are not considered distinguishable and thus do not satisfy the business name distinguishability requirement. The bill also provides that the business name distinguishability requirement does

not require business entity names be distinguishable from the name of any general partnership registration or limited liability partnership statement.

II. Present Situation:

For-profit Corporations

For-profit corporations are established in Florida under ch. 607, F.S., the Florida Business Corporation Act. Generally, a corporation is a complex business structure and is considered a separate legal entity from its owners, who own shares of stock in the company.¹ A corporation may be taxed, sued, and can enter into contractual agreements.² Shareholders are not personally liable for corporate obligations. Similarly, directors are generally not personally liable for damages for their actions regarding corporate management or policy.³

As the name suggests, a for-profit corporation exists to pursue the goal of profit maximization for its shareholders.⁴ In pursuing this goal, a corporation's directors must act in good faith, with the care an ordinarily prudent person in a like position would exercise, and in a manner he or she reasonably believes to be in the best interests of the corporation.⁵ Additionally, Florida law specifically permits a director, in discharging his or her duties, to consider other factors he or she deems relevant, including

the long-term prospects and interests of the corporation and its shareholders, and the social, economic, legal, or other effects of any action on the employees, suppliers, customers of the corporation or its subsidiaries, the communities and society in which the corporation or its subsidiaries operate, and the economy of the state and the nation.⁶

Social Purpose Corporations and Benefit Corporations

Recent interest among consumers, investors, and entrepreneurs in socially responsible businesses that pursue public benefit goals in addition to, or even as a priority over, the business' profit motive has led to the creation of new forms of corporate entities.⁷

¹ For basic information regarding corporations, see *Choose Your Business Structure: Corporation*, SBA.Gov, <http://www.sba.gov/content/corporation> (last visited Feb. 10, 2014).

² See s. 607.0302, F.S.

³ Section 607.0831, F.S.

⁴ See, e.g., *Dodge v. Ford*, 170 N.W. 668, 684 (1919) ("A business corporation is organized and carried on primarily for the profit of the stockholders."); Stephen M. Bainbridge, *In Defense of the Shareholder Wealth Maximization Norm: A Reply to Professor Green*, 50 Wash. & Lee L. Rev. 1423 (1993) ("Shareholder wealth maximization long has been the fundamental norm which guides U.S. corporate decisionmakers.")

⁵ Section 607.0830(1), F.S.

⁶ *Id.* at (3).

⁷ See B Lab, *White Paper; The Need and Rationale for the Benefit Corporation: Why it is the Legal Form that Best Addresses the Needs of Social Entrepreneurs, Investors, and Ultimately the Public*, 2-6 Jan. 18, 2013 available at http://benefitcorp.net/storage/documents/BeneCit_Corporation_White_Paper_1_18_2013.pdf (last visited Feb. 11, 2014).

The Business Law Section of the Florida Bar has proposed the creation of two new alternative forms of corporate entity: social purpose corporations and benefit corporations.⁸ As explained by the Business Law Section, these entities “will allow entrepreneurs and investors to cause their corporation to engage in significant societal benefit programs that may not involve or satisfy the traditional corporate norm of profit maximization.”⁹

The primary difference between a social purpose corporation and a benefit corporation is the public benefit purpose imposed upon each of the corporations. A social purpose corporation must pursue or create one or more public benefits, which may be quite specific. In contrast, a benefit corporation must pursue or create a “general public benefit,” which is a broad purpose intended to encompass many societal and environmental factors that are impacted by the business and operations of the corporation.¹⁰ For both types of corporation, the directors and officers are required to consider the effects of any corporate action or inaction upon the benefit goals of the corporation. Standard corporate law does not impose such a mandate.¹¹

The primary purpose of both a social purpose corporation and a benefit corporation is to allow directors and officers of the corporation to pursue the twin goals of public benefit and profit maximization. Because these corporations still retain profit-making goals, they are distinguishable from charities and not-for-profit corporations and could not be formed as such.¹²

Benefit corporation legislation has been adopted in 19 states plus the District of Columbia, and social purpose corporation legislation has been adopted in two states.¹³

Business Entity Name Distinguishability

Chapters 605, 607, 617, and 620, F.S., currently require the name of a limited liability company (LLC), for-profit corporation, nonprofit corporation, and limited partnership to be distinguishable from the names of all other entities or filings on file with the Department of State (DOS), with the exception of fictitious name registrations. However, the term “distinguishable” is not defined by any of these statutes.¹⁴ According to DOS, some businesses try to adopt names that are similar to existing businesses in an effort to capitalize on the goodwill of existing businesses.¹⁵ Close name similarities can cause confusion in the business environment and in some instances existing businesses experience hardships when new businesses form and use names similar to that of an established business.¹⁶

⁸ The Business Law Section of the Florida Bar, *Proposed Legislation to Amend Chapter 607, Florida Statutes, to Provide for the Creation of a Florida Social Purpose Corporation and a Florida Benefit Corporation*, 1 (Jan. 15, 2014) (on file with the Committee on Commerce and Tourism).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² *Id.* at 4.

¹³ *Id.* at 11-12.

¹⁴ DOS Bill Analysis, SB 654, 2 (Feb. 4, 2014) (on file with the Committee on Commerce and Tourism).

¹⁵ DOS, *Business Entity Name Distinguishability* (on file with the Committee on Commerce and Tourism).

¹⁶ *Id.*

III. Effect of Proposed Changes:

Social Purpose Corporations and Benefit Corporations

Restructure of Ch. 607, F.S.

Sections 2, 6, and 20 of the bill breaks ch. 607, F.S., the Florida Business Corporation Act, into 3 parts. Part I is entitled “Corporations” and comprises ss. 607.0101-607.193, F.S., which are current law regulations for for-profit corporations. Part II is entitled “Social Purpose Corporations” and comprises ss. 607.501- 607.513, F.S., which are created in the bill. Part III is entitled “Benefit Corporations” and comprises ss. 607.601-607.613, F.S., which are created in the bill.

Sections 7 and 21 create ss. 607.501 and 607.601, F.S., respectively, to provide that part II of ch. 607, F.S., applies to a social purpose corporation and that part III of ch. 607, F.S., applies to a benefit corporation. The bill also provides that except for those provisions in ch. 607, F.S., that specifically apply to social purpose or benefit corporations, all otherwise non-conflicting provisions of ch. 607, F.S., apply as well. Additionally, unless authorized in the applicable part, a social purpose or benefit corporation’s articles of incorporation (articles) or bylaws, or a shareholders’ agreement, may not limit, be inconsistent with, or supersede the applicable part.

Sections 8 and 22 create ss. 607.502 and 607.602, F.S., respectively, to provide definitions for terms used in parts II and III of ch. 607, F.S., which are created by the bill.

Sections 9 and 23 create ss. 607.503 and 607.603, F.S., respectively, to require the corporation’s articles to state that it is either a social purpose corporation or a benefit corporation and to require the incorporator to satisfy the requirements of ch. 607, F.S.

Creation of Social Purpose Corporation and Benefit Corporation

Sections 10 and 24 create ss. 607.504 and 607.604, F.S., respectively, to permit an existing corporation to become a social purpose or benefit corporation by amending its articles to include a statement that the corporation is a social purpose corporation or benefit corporation or by a merger, conversion, or share exchange. Such action must be adopted by a minimum status vote. A “minimum status vote” is defined, in the case of a corporation, as a vote in which all shareholders are entitled to vote and the action is approved by a two-thirds vote of each class or series of shares entitled to vote; or, in the case of a domestic entity other than a corporation, as a vote in which the holders of each class or series of equity interest in the entity who are entitled to receive a distribution are entitled to vote on or consent to the action and the action is approved by a two-thirds vote or consent of each class or series of equity interest who are entitled to vote or consent.¹⁷

If an entity elects to become a social purpose or benefit corporation by amendment of its articles or by a merger, conversion, or share exchange, shareholders are entitled to appraisal rights.

¹⁷ The definitions of “minimum status vote” are created in ss. 607.502(5) and 607.602(7), F.S., in Sections 8 and 22 of the bill.

Termination of Social Purpose Corporation or Benefit Corporation Status

Sections 11 and 25 create ss. 607.505 and 607.605, F.S., respectively, to permit a social purpose or benefit corporation to terminate its status as such by amending its articles, or by merger, conversion, or share exchange. Termination of its status requires a minimum status vote unless the transaction terminating the status is in the usual and regular course of business, pursuant to a court order, or is a sale in which all or a substantial portion of the net proceeds of the sale will be distributed to the shareholders within 1 year of the sale.

If a corporation's status as a social purpose or benefit corporation is terminated pursuant to an amendment of its articles or by a merger, conversion, or share exchange, shareholders of the corporation are entitled to appraisal rights.

Section 5 amends s. 607.1302, F.S., to provide appraisal rights to shareholders of a domestic corporation that becomes a social purpose or a benefit corporation, or terminates its status as such, by amendment of its articles or by a merger, conversion, or share exchange.

Statutory Public Benefit Purposes

Sections 12 and 26 create ss. 607.506 and 607.606, F.S., respectively to describe the statutory corporate purposes of social purpose corporations and benefit corporations.

A social purpose corporation has the purpose of creating a "public benefit," which is defined as a positive effect, or the minimization of negative effects, on the environment or on *one or more* categories of persons or entities, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological, or scientific nature, due to the business and operations of the corporation. The term includes:

- Providing low-income or underserved individuals or communities with beneficial products or services.
- Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.
- Protecting or restoring the environment.
- Improving human health.
- Promoting the arts, sciences, or advancement of knowledge.
- Increasing the flow of capital to entities that provide a benefit to society or the environment.¹⁸

A social purpose corporation's articles may identify one or more additional specific public benefits as its purpose in its articles in addition to its original public benefit purpose and any other lawful purpose it may have. The specific public benefit must be consistent with the corporation's public benefit.¹⁹ It may amend its articles to add, amend, or delete the identification of any additional public benefit; however, the amendment must be adopted by a

¹⁸ The definition of "public benefit" for social purpose corporations is created in Section 8 of the bill, creating s. 607.502(6), F.S.

¹⁹ The definition of "specific public benefit" for social purpose corporations is created in Section 8 of the bill, creating s. 607.502(8), F.S.

minimum status vote. In sum, a social purpose corporation must pursue or create one or more narrowly identifiable public benefits.²⁰

A benefit corporation, however, has the purpose of creating a *general* public benefit, which is broadly defined as a material, positive effect on society and the environment, as assessed using a third-party standard, which is attributable to the business and operations of the corporation.²¹ In addition to its general public benefit purpose, a benefit corporation's articles may also identify one or more specific public benefits, which are defined similar to "public benefit" for a social purpose corporation as discussed above. Any specific public benefit adopted by a benefit corporation must be consistent with the general benefit purpose of the corporation.²² It may amend its articles to add, amend, or delete the identification of a specific public benefit; however, the amendment must be adopted by a minimum status vote. Additionally, the adoption of a specific public benefit, does not relieve the benefit corporation of its obligation to create a general public benefit.²³

Unlike a social purpose corporation, which must pursue or create one or more narrowly defined public benefits, a benefit corporation must pursue or create a *general* public benefit, which, as indicated by the Business Law Section, "is a broad purpose intended to encompass many societal and environmental factors that are impacted by the business and operations of the corporation."²⁴ However, both corporations may adopt additional specific public benefits.

The bill also provides that the creation of any specific public benefit by a social purpose corporation or the creation of a general public benefit and specific public benefit by a benefit corporation are in the best interest of the corporation. Additionally, a professional corporation that is a social purpose corporation or a benefit corporation and complies with the applicable statutory purpose does not violate s. 621.08, F.S., which limits a professional service corporation or limited liability company to engage only in providing professional services for which the entity was specifically organized.

Standard of Conduct for Directors and Officers

Sections 13, 15, 27, and 29 create ss. 607.507, 607.509, 607.607 and 607.609, F.S., respectively to regulate the standard of conduct for directors and officers of social purpose corporations and benefit corporations.

Directors and officers of social purpose corporations *must* consider the effects of any action by the corporation or any discretionary action by its officers on the corporation's shareholders and on the corporation's ability to accomplish any public benefits identified in its articles. The directors and officers *may* also consider the effect of a corporate action on the corporation's work force, its customers and suppliers, community and societal factors, the environment, the interests of the corporation, and any other pertinent factors or the interests of any group that they

²⁰ The Business Law Section, *Proposed Legislation to Amend Chapter 607* at 1.

²¹ The definition of "general public benefit" for benefit corporations is created in Section 22 of the bill, creating s. 607.602(5), F.S.

²² The definition of "specific public benefit" for benefit corporations is created in Section 22 of the bill, creating s. 607.602(8), F.S.

²³ See The Business Law Section, *Proposed Legislation to Amend Chapter 607* at 8.

²⁴ *Id.* at 1.

deem appropriate. Directors and officers are not required to give priority or equal weight to the interests of a particular person or group unless the corporation states in its articles its intention to give such priority or equal weight.

Directors and officers of benefit corporations *must* consider the effects of any action by the corporation or any discretionary action by its officers on the corporation's shareholders, work force, and customers and suppliers; community and societal factors; the environment; the interests of the corporation; and on the corporation's ability to accomplish its general public benefit purpose and any applicable specific public benefit. The directors and officers *may* consider any other pertinent factors or the interests of any group that they deem appropriate. However, directors and officers are not required to give priority or equal weight to the interests of a particular person or group, unless the corporation states in its articles its intention to give such priority or equal weight.

The bill provides that a director or officer of a social purpose or benefit corporation is not personally liable for monetary damages to the corporation, shareholders, or potential beneficiaries of the corporation's benefit goals for failure to pursue or create a benefit, unless the corporation's articles expressly provide otherwise. Directors are still subject to the traditional duties of good faith and care and to fiduciary principles applicable to all corporate directors under s. 607.0830, F.S.,²⁵ and officers are still subject to any additional duties prescribed under the corporation's bylaws pursuant to s. 607.0841, F.S. However, an officer's consideration of those interests and factors described above is not a violation of any duties prescribed under the corporation's bylaws pursuant to s. 607.0841, F.S.

Benefit Directors

Sections 14 and 28 create ss. 607.508 and 607.608, F.S., respectively, to allow a social purpose corporation and a benefit corporation to include, in its articles, an elected, independent²⁶ benefit director. "Independent" is defined as not having a material relationship with the corporation or a subsidiary. A material relationship is presumed to exist:

- If the individual has been an employee, other than a benefit officer, of the corporation or a subsidiary within the last 3 years;
- If an immediate family member of the individual has been an executive officer, other than a benefit officer, of the corporation or a subsidiary within the last 3 years;
- If the individual or an entity of which the individual is a director, officer, or manager owns 5 percent or more of the shares of the corporation; or
- If an entity in which the individual owns 5 percent or more of the outstanding equity interests owns 5 percent or more of the shares of the corporation.²⁷

A benefit director has the powers, duties, rights and immunities as other corporate directors, and his or her actions or inactions are inseparable from his or her status as a director.

²⁵ The Business Law Section, *Proposed Legislation to Amend Chapter 607* at 8.

²⁶ Benefit directors of professional service corporations and limited liability companies organized under ch. 621, F.S., are not required to be independent.

²⁷ The definitions of "independent" are created in ss. 607.502(4) and 607.602(6), F.S., in Sections 8 and 22 of the bill.

Unless the corporation's articles or bylaws provide otherwise, the benefit director must prepare a report to be included in the corporation's annual benefit report²⁸ that provides his or her opinion on:

- Whether the corporation acted in accordance with its benefit purpose;
- Whether the corporation's directors and officers complied with the statutory standards of conduct; and
- Whether the corporation or its directors or officers failed, in the case of the corporation, to act in accordance with its statutory purpose, or, in the case of directors and officers, to comply with the requirements to consider the interests and factors provided in ss. 607.507(1) or 607.607(1), F.S., in deciding on a corporate action.

Benefit Officers

Sections 16 and 30 create ss. 607.510 and 607.610, F.S., respectively, to allow a social purpose corporation and a benefit corporation to designate an officer as a benefit officer with powers and duties set forth in the bylaws or determined by the board of directors. Such powers and duties may include preparing the corporation's annual benefit report and any other powers and duties relating to the public benefit, general public benefit, or specific public benefit purpose of the corporation.

Rights of Action and Benefit Enforcement Proceedings

Sections 17 and 31 create ss. 607.511 and 607.611, F.S., respectively, to identify the circumstances under which a person may bring a cause of action against a social purpose corporation or a benefit corporation. Generally, a person may not assert a claim against a social purpose or benefit corporation, or any of its respective directors or officers, for failing to pursue or create a public benefit or general public benefit, as the case may be, or pursue or create a specific public benefit as set forth in the corporation's articles. Additionally, a person is generally barred from asserting a claim against a social purpose or benefit corporation, or any of its respective directors or officers, for violating any obligation, duty, or standard of conduct under ch. 607, F.S.

However, the bill provides that a benefit enforcement proceeding may be brought against the corporation, its directors, and officers directly by the corporation or derivatively by a shareholder, director, person or group that owns 5 percent or more of the outstanding equity interest in an entity of which the corporation is a subsidiary, or any other person specified in the corporation's articles or bylaws. A "benefit enforcement proceeding" is defined as a claim or action for a social purpose or benefit corporation's failure to pursue or create a public benefit or general public benefit, as the case may be, or pursue or create a specific public benefit as set forth in the corporation's articles.²⁹ A benefit enforcement proceeding may also be brought for a violation of any obligation, duty, or standard of conduct under the applicable provisions of part II or part III of ch. 607, F.S.

The bill also provides that a social purpose corporation or a benefit corporation is not liable for monetary damages for failure of the corporation to pursue or create a public benefit or general

²⁸ See "Annual Benefit Report" section below.

²⁹ "Benefit enforcement proceeding" is defined in Sections 8 and 22 of the bill, creating ss. 607.502(2) and 607.602(3), F.S.

public benefit, as the case may be, or pursue or create a specific public benefit as set forth in the corporation's articles.

Annual Benefit Report

Sections 18 and 32 create ss. 607.512 and 607.612, F.S., to require a social purpose corporation and a benefit corporation to prepare and distribute an annual benefit report to shareholders.

For a benefit corporation, the annual report must be based on a third-party standard that is either applied consistently with previous annual reports or contains an explanation of any changes from prior reports. The bill defines a "third-party standard" as a recognized standard for defining, reporting, and assessing the societal and environmental performance of a business. The third-party standard must be:

- Comprehensive in its assessment of the effect of the business on the interests and factors the corporation and its officers and directors must consider when deciding on a course of action;
- Developed by an entity that is not controlled by the corporation;
- Developed by an entity with the expertise to assess the overall effect of the business and that uses a comprehensive approach to develop the standard, including a period for public comment; and
- Transparent by making information regarding the criteria used under the third-party standard and information regarding any possible conflict of interest between the entity that developed the standard and the corporation publicly available.³⁰

Unlike a benefit corporation, a social purpose corporation's annual benefit report is not required to be based on a third-party standard³¹ unless required by the articles or the board of directors. If a third-party standard is required, it must either be applied consistently with previous annual reports or contain an explanation of any changes from prior reports.

For both a social purpose corporation and a benefit corporation, the annual benefit report must also include a description of:

- The ways in which the corporation pursued a public benefit, or general public benefit, as the case may be, during the year and the extent to which such a benefit was created.
- Any circumstance that has hindered the pursuit or creation of a public benefit or general public benefit, as the case may be, by the corporation.
- The process and rationale for selecting or changing the third-party standard used to prepare the benefit report.
- The name and addresses of the benefit director and the benefit officer, if those positions exist.
- If the corporation has a benefit director, he or she must include in the benefit report the required opinion statement regarding the corporation's fulfillment of its statutory benefit purpose.³²
- If a third-party standard is used, the report must contain a statement of any connection between the entity that established the standard, its directors, officers, or any person with

³⁰ "Third-party standard" is defined in Sections 8 and 22 of the bill, creating ss. 607.502(10) and 607.602(10), F.S.

³¹ *Id.*

³² See "Benefit Directors" section above.

significant control over the entity, and the corporation, its directors, officers, or any significant shareholder of the corporation, including any information that might affect the credibility of the use of the third-party standard.³³

If a benefit director resigned, refused to stand for reelection, or was removed from his or her position, and furnished written correspondence to the corporation concerning the circumstances surrounding his or her departure, that correspondence must be included in the annual benefit report.

Lastly, the annual benefit report and the third-party standard, if used, are not required to be audited or certified by a third-party standards provider.

Annual Benefit Report Availability

Sections 19 and 33 create ss. 607.513 and 607.613, F.S., to regulate the availability of annual benefit reports created by social purpose corporations and benefit corporations. The bill requires a social purpose corporation and a benefit corporation to send its annual benefit report to each shareholder either within 120 days after the end of the corporation's fiscal year or at the same time that the corporation delivers any other annual report to its shareholders. Additionally, the corporation must post each annual benefit report on the public portion of its website for at least 3 years. If the corporation does not have a website, it must provide a free copy of its most recent annual benefit report to any person who requests a copy.

If a social purpose corporation or benefit corporation does not comply with the benefit report delivery requirements, the circuit court in the county in which the principal office of the corporation is located or, if no office is located in this state, the county in which its registered office is located, may, after a shareholder requests a copy, summarily order the corporation to provide the annual benefit report. If the court orders the annual benefit report to be provided, the court may order the corporation to pay the shareholder's costs, including attorney fees.

Business Entity Name Distinguishability

Sections 1, 4, 34, 35 amend ss. 605.0112, 607.0401, 617.0401, and 620.1108, F.S., to specify which differences in the name of an LLC, for-profit corporation, nonprofit corporation, and limited partnership are not considered distinguishable, and thus do not satisfy the requirement that the name of such entities be distinguishable from the names of other entities, except fictitious name registrations.

The bill also provides that the name of an LLC, for-profit corporation, nonprofit corporation, and limited partnership does not have to be distinguishable from the name of any general partnership registration or limited liability partnership statement. General partnership registration and limited partnership statements, like fictitious name registrations, are merely registered with DOS for public notice purposes.³⁴

³³ Because a third-party standard is always required in an annual benefit report for a benefit corporation, this statement must always be included in its annual benefit report.

³⁴ DOS Bill Analysis at 2.

Clarifying the distinguishability of entity names will help businesses and their customers, and it will help DOS in enforcement actions.

Sections 3, 34, 36-74 amend ss. 607.0101, 617.0401, 48.091, 215.555, 243.54, 310.171, 310.181, 329.10, 339.412, 420.101, 420.111, 420.161, 440.02, 440.386, 609.08, 617.1908, 618.221, 619.04, 624.430, 624.462, 624.489, 628.041, 631.262, 636.204, 641.2015, 655.0201, 658.23, 658.2953, 658.30, 658.36, 663.03, 663.04, 663.301, 663.306, 663.313, 718.111, 719.104, 720.302, 720.306, 766.101, and 865.09, F.S., to conform to changes made by the act and conform cross-references.

Section 75 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:

The bill may give businesses and entrepreneurs in Florida that desire to pursue public benefit goals along with traditional profit-making goals additional options for the type of corporate entity they create. It may also attract out-of-state businesses and entrepreneurs who want to form a social purpose corporation or a benefit corporation in Florida.

C. Government Sector Impact:

According to DOS, the bill will have an indeterminate impact on revenue, and any impact the bill has on DOS's information technology system can be covered by the current resources of the department.³⁵

³⁵ *Id.* at 4.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 605.0112, 607.0101, 607.0401, 607.1302, 617.0401, 620.1108, 48.091, 215.555, 243.54, 310.171, 310.181, 329.10, 339.412, 420.101, 420.111, 420.161, 440.02, 440.386, 609.08, 617.1908, 618.221, 619.04, 624.430, 624.462, 624.489, 628.041, 631.262, 636.204, 641.2015, 655.0201, 658.23, 658.2953, 658.30, 658.36, 663.03, 663.04, 663.301, 663.306, 663.313, 718.111, 719.104, 720.302, 720.306, 766.101, and 865.09.

This bill creates the following sections of the Florida Statutes: 607.501, 607.502, 607.503, 607.504, 607.505, 607.506, 607.507, 607.508, 607.509, 607.510, 607.511, 607.512, 607.513, 607.601, 607.602, 607.603, 607.604, 607.605, 607.606, 607.607, 607.608, 607.609, 607.610, 607.611, 607.612, and 607.613.

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.



380342

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 605.0112, Florida
Statutes, is amended to read:

605.0112 Name.—

(1) The name of a limited liability company:

(a) Must contain the words "limited liability company" or
the abbreviation "L.L.C." or "LLC."



380342

11 (b) Must be distinguishable in the records of the Division
12 of Corporations of the department from the names of all other
13 entities or filings that are on file with the division, except
14 fictitious name registrations pursuant to s. 865.09, general
15 partnership registrations pursuant to s. 620.8105, and limited
16 liability partnership statements pursuant to s. 620.9001 which
17 are organized, registered, or reserved under the laws of this
18 state, which names are on file with the division; however, a
19 limited liability company may register under a name that is not
20 otherwise distinguishable on the records of the division with
21 the written consent of the owner entity if, provided the consent
22 is filed with the division at the time of registration of such
23 name. A name that is different from the name of another entity
24 or filing due to any of the following is not considered
25 distinguishable:

- 26 1. A suffix.
- 27 2. A definite or indefinite article.
- 28 3. The word "and" and the symbol "&."
- 29 4. The singular, plural, or possessive form of a word.
- 30 5. A recognized abbreviation of a root word.
- 31 6. A punctuation mark or a symbol.

32 (c) May not contain language stating or implying that the
33 limited liability company is organized for a purpose other than
34 a purpose authorized in this chapter and its articles of
35 organization. ~~and~~

36 (d) May not contain language stating or implying that the
37 limited liability company is connected with a state or federal
38 government agency or a corporation or other entity chartered
39 under the laws of the United States.



380342

40 Section 2. Sections 607.0101 through 607.193, Florida
41 Statutes, are designated as part I of chapter 607, Florida
42 Statutes, and entitled "CORPORATIONS."

43 Section 3. Section 607.0101, Florida Statutes, is amended
44 to read:

45 607.0101 Short title.—This part act shall be known and may
46 be cited as the "Florida Business Corporation Act."

47 Section 4. Section 607.0401, Florida Statutes, is amended
48 to read:

49 607.0401 Corporate name.—A corporate name:

50 (1) Must contain the word "corporation," "company," or
51 "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.," or
52 the designation "Corp," "Inc," or "Co," as will clearly indicate
53 that it is a corporation instead of a natural person,
54 partnership, or other business entity.†

55 (2) May not contain language stating or implying that the
56 corporation is organized for a purpose other than that permitted
57 in this act and its articles of incorporation.†

58 (3) May not contain language stating or implying that the
59 corporation is connected with a state or federal government
60 agency or a corporation chartered under the laws of the United
61 States.†~~and~~

62 (4) Must be distinguishable from the names of all other
63 entities or filings that are on file with the Division of
64 Corporations, except fictitious name registrations pursuant to
65 s. 865.09, general partnership registrations pursuant to s.
66 620.8105, and limited liability partnership statements pursuant
67 to s. 620.9001 which are organized, registered, or reserved
68 under the laws of this state, which names are on file with the



380342

69 ~~Division of Corporations.~~ A name that is different from the name
70 of another entity or filing due to any of the following is not
71 considered distinguishable:

72 (a) A suffix.

73 (b) A definite or indefinite article.

74 (c) The word "and" and the symbol "&."

75 (d) The singular, plural, or possessive form of a word.

76 (e) A recognized abbreviation of a root word.

77 (f) A punctuation mark or a symbol.

78 (5) ~~The name of the corporation~~ As filed with the
79 Department of State, is shall be for public notice only and does
80 ~~shall~~ not alone create any presumption of ownership beyond that
81 which is created under the common law.

82 Section 5. Subsection (1) of section 607.1302, Florida
83 Statutes, is amended to read:

84 607.1302 Right of shareholders to appraisal.—

85 (1) A shareholder of a domestic corporation is entitled to
86 appraisal rights, and to obtain payment of the fair value of
87 that shareholder's shares, in the event of any of the following
88 corporate actions:

89 (a) Consummation of a conversion of such corporation
90 pursuant to s. 607.1112 if shareholder approval is required for
91 the conversion and the shareholder is entitled to vote on the
92 conversion under ss. 607.1103 and 607.1112(6), or the
93 consummation of a merger to which such corporation is a party if
94 shareholder approval is required for the merger under s.
95 607.1103 and the shareholder is entitled to vote on the merger
96 or if such corporation is a subsidiary and the merger is
97 governed by s. 607.1104;



380342

98 (b) Consummation of a share exchange to which the
99 corporation is a party as the corporation whose shares will be
100 acquired if the shareholder is entitled to vote on the exchange,
101 except that appraisal rights are ~~shall~~ not be available to any
102 shareholder of the corporation with respect to any class or
103 series of shares of the corporation that is not exchanged;

104 (c) Consummation of a disposition of assets pursuant to s.
105 607.1202 if the shareholder is entitled to vote on the
106 disposition, including a sale in dissolution but not including a
107 sale pursuant to court order or a sale for cash pursuant to a
108 plan by which all or substantially all of the net proceeds of
109 the sale will be distributed to the shareholders within 1 year
110 after the date of sale;

111 (d) An amendment of the articles of incorporation with
112 respect to the class or series of shares which reduces the
113 number of shares of a class or series owned by the shareholder
114 to a fraction of a share if the corporation has the obligation
115 or right to repurchase the fractional share so created;

116 (e) Any other amendment to the articles of incorporation,
117 merger, share exchange, or disposition of assets to the extent
118 provided by the articles of incorporation, bylaws, or a
119 resolution of the board of directors, except that no bylaw or
120 board resolution providing for appraisal rights may be amended
121 or otherwise altered except by shareholder approval; ~~or~~

122 (f) With regard to a class of shares prescribed in the
123 articles of incorporation prior to October 1, 2003, including
124 any shares within that class subsequently authorized by
125 amendment, any amendment of the articles of incorporation if the
126 shareholder is entitled to vote on the amendment and if such



380342

127 amendment would adversely affect such shareholder by:

128 1. Altering or abolishing any preemptive rights attached to
129 any of his or her shares;

130 2. Altering or abolishing the voting rights pertaining to
131 any of his or her shares, except as such rights may be affected
132 by the voting rights of new shares then being authorized of any
133 existing or new class or series of shares;

134 3. Effecting an exchange, cancellation, or reclassification
135 of any of his or her shares, when such exchange, cancellation,
136 or reclassification would alter or abolish the shareholder's
137 voting rights or alter his or her percentage of equity in the
138 corporation, or effecting a reduction or cancellation of accrued
139 dividends or other arrearages in respect to such shares;

140 4. Reducing the stated redemption price of any of the
141 shareholder's redeemable shares, altering or abolishing any
142 provision relating to any sinking fund for the redemption or
143 purchase of any of his or her shares, or making any of his or
144 her shares subject to redemption when they are not otherwise
145 redeemable;

146 5. Making noncumulative, in whole or in part, dividends of
147 any of the shareholder's preferred shares which had theretofore
148 been cumulative;

149 6. Reducing the stated dividend preference of any of the
150 shareholder's preferred shares; or

151 7. Reducing any stated preferential amount payable on any
152 of the shareholder's preferred shares upon voluntary or
153 involuntary liquidation;—

154 (g) An amendment of the articles of incorporation of a
155 social purpose corporation to which s. 607.504 or s. 607.505



380342

156 applies;

157 (h) An amendment of the articles of incorporation of a
158 benefit corporation to which s. 607.604 or s. 607.605 applies;

159 (i) A merger, conversion, or share exchange of a social
160 purpose corporation to which s. 607.504 applies; or

161 (j) A merger, conversion, or share exchange of a benefit
162 corporation to which s. 607.604 applies.

163 Section 6. Sections 607.501 through 607.513, Florida
164 Statutes, are designated as part II of chapter 607, Florida
165 Statutes, and entitled "SOCIAL PURPOSE CORPORATIONS."

166 Section 7. Section 607.501, Florida Statutes, is created to
167 read:

168 607.501 Application and effect of part.—

169 (1) This part applies to a social purpose corporation and
170 does not affect a corporation that is not a social purpose
171 corporation.

172 (2) Except as otherwise provided in this part, this chapter
173 applies generally to all social purpose corporations.

174 (3) A social purpose corporation may be simultaneously
175 subject to this part and to one or more chapters, including
176 chapter 621. In such event, this part takes precedence with
177 respect to a social purpose corporation.

178 (4) Except as authorized by this part, a provision of the
179 articles of incorporation or bylaws of a social purpose
180 corporation, or a shareholders agreement among shareholders of a
181 social purpose corporation, may not limit, be inconsistent with,
182 or supersede a provision of this part.

183 Section 8. Section 607.502, Florida Statutes, is created to
184 read:



380342

185 607.502 Definitions.—As used in this part, unless the
186 context otherwise requires, the term:

187 (1) "Benefit director" means:

188 (a) The director designated as the benefit director of a
189 social purpose corporation under s. 607.508; or

190 (b) A person with one or more of the powers, duties, or
191 rights of a benefit director to the extent provided in the
192 articles of incorporation or bylaws under s. 607.508.

193 (2) "Benefit enforcement proceeding" means a claim or
194 action for:

195 (a) The failure of a social purpose corporation to pursue
196 or create a public benefit or a specific public benefit
197 established in its articles of incorporation; or

198 (b) A violation of any obligation, duty, or standard of
199 conduct under this part.

200 (3) "Benefit officer" means the individual designated as
201 the benefit officer of a social purpose corporation under s.
202 607.510.

203 (4) "Independent" means not having a material relationship
204 with the social purpose corporation or a subsidiary of the
205 social purpose corporation. A person does not have a material
206 relationship solely by virtue of serving as the benefit director
207 or benefit officer of the social purpose corporation or a
208 subsidiary of the social purpose corporation. In determining
209 whether a director or officer is independent, a material
210 relationship between an individual and a social purpose
211 corporation or any of its subsidiaries will be conclusively
212 presumed to exist, at the time independence is to be determined,
213 if any of the following apply:



380342

214 (a) The individual is or was within the prior 3 years an
215 employee, other than a benefit officer, of the social purpose
216 corporation or a subsidiary.

217 (b) An immediate family member of the individual is or was
218 within the prior 3 years an executive officer, other than a
219 benefit officer, of the social purpose corporation or a
220 subsidiary.

221 (c) When ownership is calculated as if all outstanding
222 rights to acquire equity interests in the social purpose
223 corporation had been exercised, there is beneficial or record
224 ownership of 5 percent or more of the outstanding shares of the
225 social purpose corporation by:

226 1. The individual; or

227 2. An entity:

228 a. Of which the individual is a director, an officer, or a
229 manager; or

230 b. In which, when ownership is calculated as if all
231 outstanding rights to acquire equity interests in the entity had
232 been exercised, the individual owns beneficially or of record 5
233 percent or more of the outstanding equity interests.

234 (5) "Minimum status vote" means:

235 (a) In the case of a corporation that is to become a social
236 purpose corporation, whether by amendment of the articles of
237 incorporation or by way of or pursuant to a merger, conversion,
238 or share exchange; a social purpose corporation whose articles
239 of incorporation are to be amended pursuant to s. 607.506(2); or
240 a social purpose corporation that is to cease being a social
241 purpose corporation, in addition to any other required approval
242 or vote, the satisfaction of the following conditions:



380342

243 1. The holders of each class or series of shares shall be
244 entitled to vote as a separate voting group on the corporate
245 action regardless of any limitation on the voting rights of any
246 class or series stated in the articles of incorporation or
247 bylaws.

248 2. The corporate action is approved by vote of each class
249 or series of shares entitled to vote by at least two-thirds of
250 the total votes of the class or series.

251 (b) In the case of a domestic entity, other than a
252 corporation, which is to be simultaneously converted to a social
253 purpose corporation or merged into a social purpose corporation,
254 in addition to any other required approval, vote, or consent,
255 the satisfaction of the following conditions:

256 1. The holders of each class or series of equity interest
257 in the entity who are entitled to receive a distribution of any
258 kind are entitled, as a separate voting group, to vote on or
259 consent to the action regardless of any applicable limitation on
260 the voting or consent rights of any class or series.

261 2. The action is approved by vote or consent of each class
262 or series of equity interest described in subparagraph 1. who
263 are entitled to vote by at least two-thirds of the votes or
264 consent of the class or series.

265 (6) "Public benefit" means a positive effect, or the
266 minimization of negative effects taken as a whole, on the
267 environment or on one or more categories of persons or entities
268 other than shareholders in their capacity as shareholders, of an
269 artistic, charitable, economic, educational, cultural, literary,
270 religious, social, ecological, or scientific nature, from the
271 business and operations of a social purpose corporation. The



380342

272 term includes, but is not limited to, the following:
273 (a) Providing low-income or underserved individuals or
274 communities with beneficial products or services.
275 (b) Promoting economic opportunity for individuals or
276 communities beyond the creation of jobs in the normal course of
277 business.
278 (c) Protecting or restoring the environment.
279 (d) Improving human health.
280 (e) Promoting the arts, sciences, or advancement of
281 knowledge.
282 (f) Increasing the flow of capital to entities that have as
283 their stated purpose the provision of a benefit to society or
284 the environment.
285 (7) "Social purpose corporation" means a corporation that
286 is formed, or has elected to become, subject to this part, the
287 status of which as a social purpose corporation has not been
288 terminated.
289 (8) "Specific public benefit" means a benefit identified as
290 a purpose of the social purpose corporation which is set forth
291 in the articles of incorporation and is consistent with a public
292 benefit.
293 (9) "Subsidiary" means, in relation to a person other than
294 an individual, an entity in which the person owns beneficially
295 or of record 50 percent or more of the outstanding equity
296 interests.
297 (10) "Third-party standard" means a recognized standard for
298 defining, reporting, and assessing the societal and
299 environmental performance of a business which is:
300 (a) Comprehensive, because it assesses the effect of the



380342

301 business and its operations upon the interests listed in s.
302 607.507(1) (a) .

303 (b) Developed by an entity that is not controlled by the
304 social purpose corporation.

305 (c) Credible, because it is developed by an entity that has
306 access to necessary expertise to assess the overall effect of
307 the business and uses a balanced, collaborative approach to
308 develop the standard, including a period for public comment.

309 (d) Transparent, because the following information is
310 publicly available:

311 1. The criteria considered under the standard when
312 measuring the overall effect of the business and its operations
313 upon the interests provided in s. 607.507(1) (a) and the relative
314 weights, if any, of those criteria; and

315 2. The process used in the development and revision of the
316 third-party standard regarding the identity of the directors,
317 officers, material owners, and governing body of the entity that
318 developed and controls revisions to the standard; the process by
319 which revisions to the standard and changes to the membership of
320 the governing body are made; and an accounting of the revenue
321 and sources of financial support for the entity with sufficient
322 detail to disclose any relationships that could reasonably be
323 considered to present a potential conflict of interest.

324 Section 9. Section 607.503, Florida Statutes, is created to
325 read:

326 607.503 Incorporation.—To incorporate as a social purpose
327 corporation, an incorporator must satisfy the requirements of
328 this chapter, and the articles of incorporation must state that
329 the corporation is a social purpose corporation under this part.



380342

330 Section 10. Section 607.504, Florida Statutes, is created
331 to read:

332 607.504 Election of social purpose corporation status.—

333 (1) An existing corporation may become a social purpose
334 corporation under this part by amending its articles of
335 incorporation to include a statement that the corporation is a
336 social purpose corporation under this part. The amendment must
337 be adopted by the minimum status vote.

338 (2) A plan of merger, conversion, or share exchange must be
339 adopted by the minimum status vote if an entity that is not a
340 social purpose corporation is a party to the merger or
341 conversion or if the exchanging entity in a share exchange and
342 the surviving, new, or resulting entity is, or will be, a social
343 purpose corporation.

344 (3) If an entity elects to become a social purpose
345 corporation by amendment of the articles of incorporation or by
346 a merger, conversion, or share exchange, the shareholders of the
347 entity are entitled to appraisal rights under and pursuant to
348 ss. 607.1301-607.1333.

349 Section 11. Section 607.505, Florida Statutes, is created
350 to read:

351 607.505 Termination of social purpose corporation status.—

352 (1) A social purpose corporation may terminate its status
353 as such and cease to be subject to this part by amending its
354 articles of incorporation to delete the provision required under
355 s. 607.503 or s. 607.504. The amendment must be adopted by the
356 minimum status vote.

357 (2) A plan of merger, conversion, or share exchange which
358 has the effect of terminating the status of a corporation as a



380342

359 social purpose corporation must be adopted by the minimum status
360 vote. A sale, lease, exchange, or other disposition of all or
361 substantially all of the assets of a social purpose corporation
362 is not effective unless the transaction is approved by the
363 minimum status vote. However, a minimum status vote is not
364 required if the transaction is in the usual and regular course
365 of business, is pursuant to court order, or is a sale pursuant
366 to which all or a substantial portion of the net proceeds of the
367 sale will be distributed to the shareholders within 1 year after
368 the date of the sale.

369 (3) If a corporation's status as a social purpose
370 corporation is terminated pursuant to subsection (1) or
371 subsection (2), shareholders of the corporation are entitled to
372 appraisal rights under and pursuant to ss. 607.1301-607.1333.

373 Section 12. Section 607.506, Florida Statutes, is created
374 to read:

375 607.506 Corporate purpose.-

376 (1) A social purpose corporation has the purpose of
377 creating a public benefit. This purpose is in addition to its
378 purpose under s. 607.0301.

379 (2) The articles of incorporation of a social purpose
380 corporation may identify one or more specific public benefits as
381 its purpose in addition to its purposes under s. 607.0301 and
382 subsection (1). A social purpose corporation may amend its
383 articles of incorporation to add, amend, or delete the
384 identification of a specific public benefit purpose; however,
385 the amendment must be adopted by the minimum status vote.

386 (3) The creation of a public benefit and a specific public
387 benefit under subsections (1) and (2) is deemed to be in the



380342

388 best interest of the social purpose corporation.

389 (4) A professional corporation that is a social purpose
390 corporation does not violate s. 621.08 by having as its purpose
391 the creation of a public benefit or a specific public benefit.

392 Section 13. Section 607.507, Florida Statutes, is created
393 to read:

394 607.507 Standard of conduct for directors.-

395 (1) In discharging their duties and in considering the best
396 interests of the social purpose corporation, the directors:

397 (a) Shall consider the effects of any action or inaction
398 upon:

399 1. The shareholders of the social purpose corporation; and

400 2. The ability of the social purpose corporation to
401 accomplish its public benefit or any specific public benefit
402 purpose.

403 (b) May consider the effects of any action or inaction upon
404 any of the following:

405 1. The employees and work force of the social purpose
406 corporation, its subsidiaries, and its suppliers.

407 2. The interests of customers and suppliers as
408 beneficiaries of the public benefit or specific public benefits
409 of the social purpose corporation.

410 3. Community and societal factors, including those of each
411 community in which offices or facilities of the social purpose
412 corporation, its subsidiaries, or its suppliers are located.

413 4. The local and global environment.

414 5. The short-term and long-term interests of the social
415 purpose corporation, including benefits that may accrue to the
416 social purpose corporation from its long-term plans and the



380342

417 possibility that these interests may be best served by the
418 continued independence of the social purpose corporation.

419 (c) May consider other pertinent factors or the interests
420 of any other group that they deem appropriate.

421 (d) Are not required to give priority to the interests of a
422 particular person or group referred to in paragraph (a),
423 paragraph (b), or paragraph (c) unless the social purpose
424 corporation states in its articles of incorporation its
425 intention to give such priority.

426 (e) Are not required to give equal weight to the interests
427 of any particular person or group referred to in paragraph (a),
428 paragraph (b), or paragraph (c) unless the social purpose
429 corporation has stated in its articles of incorporation its
430 intention to give such equal weight.

431 (2) Except as provided in the articles of incorporation, a
432 director is not personally liable for monetary damages to the
433 corporation, or to any other person, for the failure of the
434 social purpose corporation to pursue or create a public benefit
435 or a specific public benefit. A director is subject to the
436 duties specified in s. 607.0830.

437 (3) Except as provided in the articles of incorporation, a
438 director does not have a duty to a person who is a beneficiary
439 of the public benefit purpose or any one or more specific public
440 benefit purposes of a social purpose corporation.

441 Section 14. Section 607.508, Florida Statutes, is created
442 to read:

443 607.508 Benefit director.—

444 (1) If the articles of incorporation so provide, the board
445 of directors of a social purpose corporation may include a



380342

446 director who is designated as the benefit director and, in
447 addition to the powers, duties, rights, and immunities of the
448 other directors of the social purpose corporation, has the
449 powers, duties, rights, and immunities provided in this part.

450 (2) The benefit director shall be elected, and may be
451 removed, in the manner provided by this chapter. Except as
452 provided under subsection (5), the benefit director shall be
453 independent and may serve as a benefit officer. The articles of
454 incorporation or bylaws may prescribe additional qualifications
455 of the benefit director.

456 (3) Unless the articles of incorporation or bylaws provide
457 otherwise, the benefit director shall prepare, and the social
458 purpose corporation shall include in the annual benefit report
459 to shareholders required under s. 607.512, the opinion of the
460 benefit director on the following:

461 (a) Whether the social purpose corporation in all material
462 respects acted in accordance with its public benefit purpose and
463 any specific public benefit purpose during the period covered by
464 the report.

465 (b) Whether the directors and officers complied with ss.
466 607.507(1) and 607.509(1).

467 (c) Whether the social purpose corporation or its directors
468 or officers failed to comply with paragraph (a) or s. 607.507(1)
469 or s. 607.509(1), including a description of the ways in which
470 the social purpose corporation or its directors or officers
471 failed to comply.

472 (4) The action or inaction of an individual in his or her
473 capacity as a benefit director shall constitute for all purposes
474 an action or inaction of that individual in his or her capacity



380342

475 as a director of the social purpose corporation.

476 (5) The benefit director of a corporation formed under
477 chapter 621 is not required to be independent.

478 Section 15. Section 607.509, Florida Statutes, is created
479 to read:

480 607.509 Standard of conduct for officers.-

481 (1) If an officer of a social purpose corporation
482 reasonably believes that a matter may have a material effect on
483 the ability of the corporation to create a public benefit or a
484 specific public benefit identified in the articles of
485 incorporation and the officer has discretion to act on the
486 matter, the officer shall consider the interests and factors
487 provided in s. 607.507(1).

488 (2) The officer's consideration of interests and factors
489 under subsection (1) does not constitute a violation of s.
490 607.0841.

491 (3) Except as provided in the articles of incorporation, an
492 officer is not personally liable for monetary damages to the
493 corporation or any other person for the failure of the social
494 purpose corporation to pursue or create a public benefit or a
495 specific public benefit; however, he or she is subject to s.
496 607.0841.

497 (4) Except as provided in the articles of incorporation, an
498 officer does not have any duty to a person who is a beneficiary
499 of the public benefit purpose or any specific public benefit
500 purpose of a social purpose corporation arising from the status
501 of the person as a beneficiary.

502 Section 16. Section 607.510, Florida Statutes, is created
503 to read:



380342

504 607.510 Benefit officer.-

505 (1) A social purpose corporation may designate an officer
506 as the benefit officer.

507 (2) The benefit officer has the powers and duties set forth
508 in the bylaws or determined by the board of directors, which may
509 include, but are not limited to:

510 (a) Powers and duties relating to the public benefit or a
511 specific public benefit purpose of the corporation; and

512 (b) The duty to prepare the annual benefit report required
513 under s. 607.512.

514 Section 17. Section 607.511, Florida Statutes, is created
515 to read:

516 607.511 Right of action.-

517 (1) (a) Except in a benefit enforcement proceeding, a person
518 may not bring an action or assert a claim against a social
519 purpose corporation or its directors or officers with respect
520 to:

521 1. A failure to pursue or create a public benefit or a
522 specific public benefit set forth in its articles of
523 incorporation; or

524 2. A violation of an obligation, duty, or standard of
525 conduct under this part.

526 (b) A social purpose corporation is not liable for monetary
527 damages under this part for the failure of the social purpose
528 corporation to pursue or create a public benefit or a specific
529 public benefit.

530 (2) A benefit enforcement proceeding may be commenced or
531 maintained only:

532 (a) Directly by the social purpose corporation; or



380342

533 (b) Derivatively by:
534 1. A shareholder of record on the date of the action or
535 inaction complained of in the benefit enforcement proceeding;
536 2. A director;
537 3. A person or group of persons that owns beneficially or
538 of record 5 percent or more of the outstanding equity interests
539 in an entity of which the social purpose corporation is a
540 subsidiary on the date of the action or inaction complained of
541 in the benefit enforcement proceeding; or
542 4. Any other person who is specified in the articles of
543 incorporation or bylaws of the social purpose corporation.
544 Section 18. Section 607.512, Florida Statutes, is created
545 to read:
546 607.512 Preparation of annual benefit report.—
547 (1) Unless it is prepared by a benefit director or benefit
548 officer, the board of directors shall prepare an annual benefit
549 report. The annual benefit report must include all of the
550 following:
551 (a) A narrative description of:
552 1. The ways in which the social purpose corporation pursued
553 a public benefit during the year and the extent to which a
554 public benefit was created.
555 2. Any circumstance that has hindered the pursuit or
556 creation of a public benefit by the social purpose corporation.
557 3. The process and rationale for selecting or changing the
558 third-party standard used to prepare the benefit report, if the
559 articles of incorporation of the social purpose corporation
560 require, or the board of directors determines, that the annual
561 benefit report must be prepared in accordance with a third-party



380342

562 standard.

563 (b) If the articles of incorporation of the social purpose
564 corporation require, or the board of directors determines, that
565 the annual benefit report must be prepared in accordance with a
566 third-party standard, the third-party standard must be:

567 1. Applied consistently with any previous application in
568 prior annual benefit reports; or

569 2. Accompanied by an explanation of the reasons for
570 inconsistent application or any change in the standard from the
571 immediate prior report.

572 (c) The name of the benefit director and the benefit
573 officer, if those positions exist, and the respective addresses
574 to which correspondence may be directed.

575 (d) If the corporation has a benefit director, his or her
576 statement as provided in s. 607.508(3).

577 (e) If the articles of incorporation of the social purpose
578 corporation require, or the board of directors determines, that
579 the annual benefit report must be prepared in accordance with a
580 third-party standard, a statement of any connection between the
581 organization that established the third-party standard, or its
582 directors, officers, or any holder of 5 percent or more of the
583 governance interests in the organization, and the social purpose
584 corporation or its directors, officers, or any holder of 5
585 percent or more of the outstanding shares of the social purpose
586 corporation, including any financial or governance relationship
587 that might materially affect the credibility of the use of the
588 third-party standard.

589 (2) If, during the year covered by an annual benefit
590 report, a benefit director resigned from, or refused to stand



380342

591 for reelection to, his or her position, or was removed from his
592 or her position, and he or she furnished written correspondence
593 to the social purpose corporation concerning the circumstances
594 surrounding his or her departure, that correspondence must be
595 included as an exhibit in the annual benefit report.

596 (3) The annual benefit report and the assessment of the
597 performance of the social purpose corporation in the annual
598 benefit report required under paragraph (1)(b) are not required
599 to be audited or certified by a third-party standards provider.

600 Section 19. Section 607.513, Florida Statutes, is created
601 to read:

602 607.513 Availability of annual benefit report.-

603 (1) Each social purpose corporation shall send its annual
604 benefit report to each shareholder:

605 (a) Within 120 days after the end of the fiscal year of the
606 social purpose corporation; or

607 (b) At the same time that the social purpose corporation
608 delivers any other annual report to its shareholders.

609 (2) A social purpose corporation shall post each annual
610 benefit report on the public portion of its website, if any, and
611 it shall remain posted for at least 3 years.

612 (3) If a social purpose corporation does not have a
613 website, the corporation shall provide a copy of its most recent
614 annual benefit report, without charge, to any person who
615 requests a copy.

616 (4) If a social purpose corporation does not comply with
617 the annual benefit report delivery requirement, the circuit
618 court in the county in which the principal office of the social
619 purpose corporation is located or, if no office is located in



380342

620 this state, the county in which its registered office is
621 located, may, after a shareholder of the social purpose
622 corporation requests a copy, summarily order the corporation to
623 furnish the annual benefit report. If the court orders the
624 annual benefit report to be furnished, the court may also order
625 the social purpose corporation to pay the shareholder's costs,
626 including reasonable attorney fees, which were incurred in
627 obtaining the order and otherwise enforce his or her rights
628 under this section.

629 Section 20. Sections 607.601 through 607.613, Florida
630 Statutes, are designated as part III of chapter 607, Florida
631 Statutes, entitled "BENEFIT CORPORATIONS."

632 Section 21. Section 607.601, Florida Statutes, is created
633 to read:

634 607.601 Application and effect of part.—

635 (1) This part applies to a benefit corporation and does not
636 affect a corporation that is not a benefit corporation.

637 (2) Except as provided in this part, this chapter applies
638 generally to all benefit corporations.

639 (3) A benefit corporation may be simultaneously subject to
640 this part and to one or more chapters, including chapter 621. In
641 such event, this part takes precedence with respect to a benefit
642 corporation.

643 (4) Except as authorized by this part, a provision of the
644 articles of incorporation or bylaws of a benefit corporation, or
645 a shareholders agreement among shareholders of a benefit
646 corporation, may not limit, be inconsistent with, or supersede a
647 provision of this part.

648 Section 22. Section 607.602, Florida Statutes, is created



380342

649 to read:

650 607.602 Definitions.—As used in this part, unless the
651 context otherwise requires, the term:

652 (1) "Benefit corporation" means a corporation that is
653 formed, or has elected to become, subject to this part, the
654 status of which as a benefit corporation has not been
655 terminated.

656 (2) "Benefit director" means:

657 (a) The director designated as the benefit director of a
658 benefit corporation under s. 607.608; or

659 (b) A person with one or more of the powers, duties, or
660 rights of a benefit director to the extent provided in the
661 articles of incorporation or bylaws under s. 607.608.

662 (3) "Benefit enforcement proceeding" means any claim or
663 action for:

664 (a) The failure of a benefit corporation to pursue or
665 create general public benefit or a specific public benefit
666 purpose set forth in its articles of incorporation; or

667 (b) A violation of any obligation, duty, or standard of
668 conduct under this part.

669 (4) "Benefit officer" means the individual designated as
670 the benefit officer of a benefit corporation under s. 607.610.

671 (5) "General public benefit" means a material, positive
672 effect on society and the environment, taken as a whole, as
673 assessed using a third-party standard which is attributable to
674 the business and operations of a benefit corporation.

675 (6) "Independent" means not having a material relationship
676 with the benefit corporation or a subsidiary of the benefit
677 corporation. A person does not have a material relationship



380342

678 solely by virtue of serving as the benefit director or benefit
679 officer of the benefit corporation or a subsidiary of the
680 benefit corporation. In determining whether a director or
681 officer is independent, a material relationship between an
682 individual and a benefit corporation or any of its subsidiaries
683 will be conclusively presumed to exist, at the time independence
684 is to be determined, if any of the following apply:

685 (a) The individual is or has been within the prior 3 years
686 an employee, other than a benefit officer, of the benefit
687 corporation or a subsidiary.

688 (b) An immediate family member of the individual is or has
689 been within the prior 3 years an executive officer, other than a
690 benefit officer, of the benefit corporation or a subsidiary.

691 (c) When ownership is calculated as if all outstanding
692 rights to acquire equity interests in the benefit corporation
693 had been exercised, there is beneficial or record ownership of 5
694 percent or more of the outstanding shares of the benefit
695 corporation by:

696 1. The individual; or

697 2. An entity:

698 a. Of which the individual is a director, an officer, or a
699 manager; or

700 b. In which, when ownership is calculated as if all
701 outstanding rights to acquire equity interests in the entity had
702 been exercised, the individual owns beneficially or of record 5
703 percent or more of the outstanding equity interests.

704 (7) "Minimum status vote" means:

705 (a) In the case of a corporation that is to become a
706 benefit corporation, whether by amendment of the articles of



380342

707 incorporation or by way of or pursuant to a merger, conversion,
708 or share exchange; a benefit corporation whose articles of
709 incorporation are to be amended pursuant to s. 607.606(2); or a
710 benefit corporation that is to cease being a benefit
711 corporation, in addition to any other required approval or vote,
712 the satisfaction of the following conditions:

713 1. The holders of each class or series of shares shall be
714 entitled to vote as a separate voting group on the corporate
715 action regardless of any limitation on the voting rights of any
716 class or series stated in the articles of incorporation or
717 bylaws.

718 2. The corporate action is approved by vote of each class
719 or series of shares entitled to vote by at least two-thirds of
720 the total votes of the class or series.

721 (b) In the case of a domestic entity, other than a
722 corporation, which is to be simultaneously converted to a
723 benefit corporation or merged into a benefit corporation, in
724 addition to any other required approval, vote, or consent, the
725 satisfaction of the following conditions:

726 1. The holders of each class or series of equity interest
727 in the entity who are entitled to receive a distribution of any
728 kind are entitled, as a separate voting group, to vote on or
729 consent to the action regardless of any applicable limitation on
730 the voting or consent rights of any class or series.

731 2. The action is approved by vote or consent of each class
732 or series of equity interest described in subparagraph 1. who
733 are entitled to vote by at least two-thirds of the votes or
734 consent of the class or series.

735 (8) "Specific public benefit" includes, but is not limited



380342

736 to:
737 (a) Providing low-income or underserved individuals or
738 communities with beneficial products or services;
739 (b) Promoting economic opportunity for individuals or
740 communities beyond the creation of jobs in the normal course of
741 business;
742 (c) Protecting or restoring the environment;
743 (d) Improving human health;
744 (e) Promoting the arts, sciences, or advancement of
745 knowledge;
746 (f) Increasing the flow of capital to entities that have as
747 their stated purpose the provision of a benefit to society or
748 the environment; and
749 (g) Any other public benefit consistent with the purposes
750 of the benefit corporation.
751 (9) "Subsidiary" means, in relation to a person other than
752 an individual, an entity in which a person owns beneficially or
753 of record 50 percent or more of the outstanding equity
754 interests.
755 (10) "Third-party standard" means a recognized standard for
756 defining, reporting, and assessing the societal and
757 environmental performance of a business which is:
758 (a) Comprehensive, because it assesses the effect of the
759 business and its operations upon the interests provided in s.
760 607.607(1)(a)2.-5.
761 (b) Developed by an entity that is not controlled by the
762 benefit corporation.
763 (c) Credible, because it is developed by an entity that has
764 access to necessary expertise to assess the overall societal and



380342

765 environmental performance of a business and uses a balanced,
766 collaborative approach to develop the standard, including a
767 period for public comment.

768 (d) Transparent, because the following information is
769 publicly available:

770 1. The criteria considered under the standard when
771 measuring the overall societal and environmental performance of
772 a business and the relative weights, if any, of those criteria.

773 2. The identity of the directors, officers, material
774 owners, and the governing body of the entity that developed and
775 controlled revisions; the process by which revisions to the
776 standard and changes to the membership of the governing body are
777 made; and an accounting of the revenue and sources of financial
778 support for the entity, with sufficient detail to disclose any
779 relationships that could reasonably be considered to present a
780 potential conflict of interest.

781 Section 23. Section 607.603, Florida Statutes, is created
782 to read:

783 607.603 Incorporation.—To incorporate as a benefit
784 corporation, an incorporator must satisfy the requirements of
785 this chapter, and the articles of incorporation must state that
786 the corporation is a benefit corporation under this part.

787 Section 24. Section 607.604, Florida Statutes, is created
788 to read:

789 607.604 Election of benefit corporation status.—

790 (1) An existing corporation may become a benefit
791 corporation under this part by amending its articles of
792 incorporation to include a statement that the corporation is a
793 benefit corporation under this part. The amendment must be



380342

794 adopted by the minimum status vote.

795 (2) A plan of merger, conversion, or share exchange must be
796 adopted by the minimum status vote if an entity that is not a
797 benefit corporation is a party to a merger or conversion or if
798 the exchanging entity in a share exchange and the surviving,
799 new, or resulting entity is, or will be, a benefit corporation.

800 (3) If an entity elects to become a benefit corporation by
801 amendment of the articles of incorporation or by a merger,
802 conversion, or share exchange, the shareholders of the entity
803 are entitled to appraisal rights under and pursuant to ss.
804 607.1301-607.1333.

805 Section 25. Section 607.605, Florida Statutes, is created
806 to read:

807 607.605 Termination of benefit corporation status.-

808 (1) A benefit corporation may terminate its status as such
809 and cease to be subject to this part by amending its articles of
810 incorporation to delete the provision required under s. 607.603
811 or s. 607.604. The amendment must be adopted by the minimum
812 status vote.

813 (2) A plan of merger, conversion, or share exchange which
814 has the effect of terminating the status of a corporation as a
815 benefit corporation must be adopted by the minimum status vote.
816 A sale, lease, exchange, or other disposition of all or
817 substantially all of the assets of a benefit corporation is not
818 effective unless the transaction is approved by the minimum
819 status vote. However, a minimum status vote is not required if
820 the transaction is in the usual and regular course of business,
821 is pursuant to court order, or is a sale pursuant to which all
822 or a substantial portion of the net proceeds of the sale will be



380342

823 distributed to the shareholders within 1 year after the date of
824 the sale.

825 (3) If a corporation's status as a benefit corporation is
826 terminated pursuant to subsection (1) or subsection (2),
827 shareholders of the corporation are entitled to appraisal rights
828 under and pursuant to ss. 607.1301-607.1333.

829 Section 26. Section 607.606, Florida Statutes, is created
830 to read:

831 607.606 Corporate purpose.—

832 (1) A benefit corporation has the purpose of creating
833 general public benefit. This purpose is in addition to its
834 purpose under s. 607.0301.

835 (2) The articles of incorporation of a benefit corporation
836 may identify one or more specific public benefits as its purpose
837 in addition to its purposes under s. 607.0301 and subsection
838 (1). A benefit corporation may amend its articles of
839 incorporation to add, amend, or delete the identification of a
840 specific public benefit purpose; however, the amendment must be
841 adopted by the minimum status vote. The identification of a
842 specific public benefit under this subsection does not limit the
843 obligation of a benefit corporation under subsection (1).

844 (3) The creation of general public benefit and a specific
845 public benefit under subsections (1) and (2) is deemed to be in
846 the best interest of the benefit corporation.

847 (4) A professional corporation that is a benefit
848 corporation does not violate s. 621.08 by having as its purpose
849 the creation of general public benefit or a specific public
850 benefit.

851 Section 27. Section 607.607, Florida Statutes, is created



380342

852 to read:

853 607.607 Standard of conduct for directors.—

854 (1) In discharging their duties and in considering the best
855 interests of the benefit corporation, the directors:

856 (a) Shall consider the effects of any action or inaction
857 upon:

858 1. The shareholders of the benefit corporation;

859 2. The employees and workforce of the benefit corporation,
860 its subsidiaries, and its suppliers;

861 3. The interests of customers and suppliers as
862 beneficiaries of the general public benefit and any specific
863 public benefit purposes of the benefit corporation;

864 4. Community and societal factors, including those of each
865 community in which offices or facilities of the benefit
866 corporation, its subsidiaries, or its suppliers are located;

867 5. The local and global environment;

868 6. The short-term and long-term interests of the benefit
869 corporation, including benefits that may accrue to the benefit
870 corporation from its long-term plans and the possibility that
871 these interests may be best served by the continued independence
872 of the benefit corporation; and

873 7. The ability of the benefit corporation to accomplish its
874 general public benefit purpose and each of its specific public
875 benefit purposes, if any.

876 (b) May consider other pertinent factors or the interests
877 of any other group that they deem appropriate.

878 (c) Are not required to give priority to the interests of a
879 particular person or group referred to in paragraph (a) or
880 paragraph (b) over the interests of any other person or group,



380342

881 unless the benefit corporation has stated in its articles of
882 incorporation its intention to give priority to certain
883 interests.

884 (d) Are not required to give equal weight to the interests
885 of a particular person or group referred to in paragraph (a) or
886 paragraph (b) unless the benefit corporation has stated in its
887 articles of incorporation its intention to give such equal
888 weight.

889 (2) Except as provided in the articles of incorporation, a
890 director is not personally liable for monetary damages to the
891 corporation, or to any other person, for the failure of the
892 benefit corporation to pursue or create general public benefit
893 or a specific public benefit. A director is subject to the
894 duties established in s. 607.0830.

895 (3) Except as provided in the articles of incorporation, a
896 director does not have a duty to a person who is a beneficiary
897 of the general public benefit purpose or any one or more
898 specific public benefit purposes of the benefit corporation.

899 Section 28. Section 607.608, Florida Statutes, is created
900 to read:

901 607.608 Benefit director.—

902 (1) If the articles of incorporation so provide, the board
903 of directors of a benefit corporation may include a director who
904 is designated as the benefit director and, in addition to the
905 powers, duties, rights, and immunities of the other directors of
906 the benefit corporation, has the powers, duties, rights, and
907 immunities provided in this part.

908 (2) The benefit director shall be elected, and may be
909 removed, in the manner provided by this chapter. Except as



380342

910 provided under subsection (5), the benefit director shall be
911 independent and may serve as a benefit officer. The articles of
912 incorporation or bylaws may prescribe additional qualifications
913 of the benefit director.

914 (3) Unless the articles of incorporation or bylaws provide
915 otherwise, the benefit director shall prepare, and the benefit
916 corporation shall include in the annual benefit report to
917 shareholders required under s. 607.612, the opinion of the
918 benefit director on the following:

919 (a) Whether the benefit corporation in all material
920 respects acted in accordance with its general public benefit
921 purpose and any specific public benefit purpose during the
922 period covered by the report.

923 (b) Whether the directors and officers complied with ss.
924 607.607(1) and 607.609(1).

925 (c) Whether the benefit corporation or its directors or
926 officers failed to comply with paragraph (a) or s. 607.607(1) or
927 s. 607.609(1), including a description of the ways in which the
928 benefit corporation or its directors or officers failed to
929 comply.

930 (4) The action or inaction of an individual in his or her
931 capacity as a benefit director shall constitute for all purposes
932 an action or inaction of that individual in his or her capacity
933 as a director of the benefit corporation.

934 (5) The benefit director of a corporation formed under
935 chapter 621 is not required to be independent.

936 Section 29. Section 607.609, Florida Statutes, is created
937 to read:

938 607.609 Standard of conduct for officers.-



380342

939 (1) If an officer of a benefit corporation reasonably
940 believes that a matter may have a material effect on the ability
941 of the corporation to create, or the creation by the corporation
942 of, general public benefit or a specific public benefit
943 identified in the articles of incorporation and the officer has
944 discretion to act on the matter, the officer shall consider the
945 interests and factors provided in s. 607.607(1).

946 (2) The officer's consideration of interests and factors
947 under subsection (1) does not constitute a violation of s.
948 607.0841.

949 (3) Except as provided in the articles of incorporation, an
950 officer is not personally liable for monetary damages to the
951 corporation or to any other person for the failure of the
952 benefit corporation to pursue or create general public benefit
953 or a specific public benefit; however, he or she is subject to
954 s. 607.0841.

955 (4) Except as provided in the articles of incorporation, an
956 officer does not have a duty to a person who is a beneficiary of
957 the general public benefit purpose or any specific public
958 benefit purpose of the benefit corporation arising from the
959 status of the person as a beneficiary.

960 Section 30. Section 607.610, Florida Statutes, is created
961 to read:

962 607.610 Benefit officer.—

963 (1) A benefit corporation may designate an officer as the
964 benefit officer.

965 (2) The benefit officer has the powers and duties set forth
966 in the bylaws or determined by the board of directors, which may
967 include, but are not limited to:



380342

968 (a) Powers and duties relating to the general public
969 benefit or a specific public benefit purpose of the corporation;
970 and

971 (b) The duty to prepare the annual benefit report required
972 under s. 607.612.

973 Section 31. Section 607.611, Florida Statutes, is created
974 to read:

975 607.611 Right of action.—

976 (1)(a) Except in a benefit enforcement proceeding, no
977 person may bring an action or assert a claim against a benefit
978 corporation or its directors or officers with respect to:

979 1. A failure to pursue or create a general public benefit
980 or a specific public benefit set forth in its articles of
981 incorporation; or

982 2. A violation of an obligation, duty, or standard of
983 conduct under this part.

984 (b) A benefit corporation is not liable for monetary
985 damages under this part for the failure of the benefit
986 corporation to pursue or create general public benefit or a
987 specific public benefit.

988 (2) A benefit enforcement proceeding may be commenced or
989 maintained only:

990 (a) Directly by the benefit corporation; or

991 (b) Derivatively by:

992 1. A shareholder of record on the date of the action or
993 inaction complained of in the benefit enforcement proceeding;

994 2. A director;

995 3. A person or group of persons that owns beneficially or
996 of record 5 percent or more of the outstanding equity interests



380342

997 in an entity of which the benefit corporation is a subsidiary on
998 the date of the action or inaction complained of in the
999 proceeding; or

1000 4. Any other person who is specified in the articles of
1001 incorporation or bylaws of the benefit corporation.

1002 Section 32. Section 607.612, Florida Statutes, is created
1003 to read:

1004 607.612 Preparation of annual benefit report.—

1005 (1) Unless it is prepared by a benefit director or a
1006 benefit officer, the board of directors shall prepare an annual
1007 benefit report. The annual benefit report must include all of
1008 the following:

1009 (a) A narrative description of:

1010 1. The ways in which the benefit corporation pursued
1011 general public benefit during the year and the extent to which
1012 the general public benefit was created.

1013 2. Any circumstance that has hindered the pursuit or
1014 creation of general public benefit or a specific public benefit
1015 by the benefit corporation.

1016 3. The process and rationale for selecting or changing the
1017 third-party standard used to prepare the benefit report.

1018 (b) The name of the benefit director and the benefit
1019 officer, if those positions exist, and the respective business
1020 addresses to which correspondence may be directed.

1021 (c) If the corporation has a benefit director, the
1022 statement as provided in s. 607.608(3).

1023 (d) A statement of any connection between the organization
1024 that established the third-party standard, or its directors,
1025 officers, or any holder of 5 percent or more of the governance



380342

1026 interests in the organization, and the benefit corporation or
1027 its directors, officers, or any holder of 5 percent or more of
1028 the outstanding shares of the benefit corporation, including any
1029 financial or governance relationship that might materially
1030 affect the credibility of the use of the third-party standard.

1031 (2) The annual benefit report must be prepared in
1032 accordance with a third-party standard that is:

1033 1. Applied consistently with any previous application in
1034 prior annual benefit reports; or

1035 2. Accompanied by an explanation of the reasons for any
1036 inconsistent application or any change in the standard from the
1037 immediate prior report.

1038 (3) If, during the year covered by an annual benefit
1039 report, a benefit director resigned from, or refused to stand
1040 for reelection to, his or her position, or was removed from his
1041 or her position, and he or she furnished written correspondence
1042 to the benefit corporation concerning the circumstances
1043 surrounding his or her departure, that correspondence must be
1044 included as an exhibit in the annual benefit report.

1045 (4) The annual benefit report and the assessment of the
1046 performance of the benefit corporation in the annual benefit
1047 report required under subsection (2) are not required to be
1048 audited or certified by a third-party standards provider.

1049 Section 33. Section 607.613, Florida Statutes, is created
1050 to read:

1051 607.613 Availability of annual benefit report.—

1052 (1) Each benefit corporation shall send its annual benefit
1053 report to each shareholder:

1054 (a) Within 120 days after the end of the fiscal year of the



380342

1055 benefit corporation; or

1056 (b) At the same time that the benefit corporation delivers
1057 any other annual report to its shareholders.

1058 (2) A benefit corporation shall post each annual benefit
1059 report on the public portion of its website, if any, and it
1060 shall remain posted for at least 3 years.

1061 (3) If a benefit corporation does not have a website, the
1062 benefit corporation shall provide a copy of its most recent
1063 annual benefit report, without charge, to any person who
1064 requests a copy.

1065 (4) If a benefit corporation does not comply with the
1066 annual benefit report delivery requirement, the circuit court in
1067 the county in which the principal office of the benefit
1068 corporation is located or, if no office is located in this
1069 state, the county in which its registered office is located,
1070 may, after a shareholder of the benefit corporation requests a
1071 copy, summarily order the corporation to furnish the report. If
1072 the court orders the report to be furnished, the court may also
1073 order the benefit corporation to pay the shareholder's costs,
1074 including reasonable attorney fees, which were incurred in
1075 obtaining the order and otherwise enforce his or her rights
1076 under this section.

1077 Section 34. Subsection (1) of section 617.0401, Florida
1078 Statutes, is amended to read:

1079 617.0401 Corporate name.—

1080 (1) A corporate name:

1081 (a) Must contain the word "corporation" or "incorporated"
1082 or the abbreviation "Corp." ~~"corp."~~ or "Inc." ~~"inc."~~ or words or
1083 abbreviations of like import in language, as will clearly



380342

1084 indicate that it is a corporation instead of a natural person,
1085 unincorporated association, or partnership. The name of the
1086 corporation may not contain the word "company" or its
1087 abbreviation "Co." ~~"co."~~

1088 (b) May contain the word "cooperative" or "co-op" only if
1089 the resulting name is distinguishable from the name of any
1090 corporation, agricultural cooperative marketing association, or
1091 nonprofit cooperative association existing or doing business in
1092 this state under part I of chapter 607, chapter 618, or chapter
1093 619.

1094 (c) May not contain language stating or implying that the
1095 corporation is organized for a purpose other than that permitted
1096 in this act and its articles of incorporation.

1097 (d) May not contain language stating or implying that the
1098 corporation is connected with a state or federal government
1099 agency or a corporation chartered under the laws of the United
1100 States.

1101 (e) Must be distinguishable from the names of all other
1102 entities or filings that are on file with the Division of
1103 Corporations, except fictitious name registrations pursuant to
1104 s. 865.09, general partnership registrations pursuant to s.
1105 620.8105, and limited liability partnership statements pursuant
1106 to s. 620.9001 which are organized, registered, or reserved
1107 under the laws of this state, that are on file with the Division
1108 of Corporations. A name that is different from a name of another
1109 entity or filing due to any of the following is not considered
1110 distinguishable:

1111 1. A suffix.

1112 2. A definite or indefinite article.



380342

1113 3. The word "and" and the symbol "&."
1114 4. The singular, plural, or possessive form of a word.
1115 5. A recognized abbreviation of a root word.
1116 6. A punctuation mark or a symbol.
1117 Section 35. Subsection (4) of section 620.1108, Florida
1118 Statutes, is amended to read:
1119 620.1108 Name.—
1120 (4) The name of a limited partnership must be
1121 distinguishable in the records of the Department of State from
1122 the names of all other entities or filings that are on file with
1123 the Department of State, except fictitious name registrations
1124 pursuant to s. 865.09, general partnership registrations
1125 pursuant to s. 620.8105, and limited liability partnership
1126 statements pursuant to s. 620.9001 which are organized,
1127 registered, or reserved under the laws of this state, ~~the names~~
1128 ~~of which are on file with the Department of State.~~ A name that
1129 is different from the name of another entity or filing due to
1130 any of the following is not considered distinguishable:
1131 (a) A suffix.
1132 (b) A definite or indefinite article.
1133 (c) The word "and" and the symbol "&."
1134 (d) The singular, plural, or possessive form of a word.
1135 (e) A recognized abbreviation of a root word.
1136 (f) A punctuation mark or a symbol.
1137 Section 36. Subsection (1) of section 48.091, Florida
1138 Statutes, is amended to read:
1139 48.091 Corporations; designation of registered agent and
1140 registered office.—
1141 (1) Every Florida corporation and every foreign corporation



380342

1142 now qualified or hereafter qualifying to transact business in
1143 this state shall designate a registered agent and registered
1144 office in accordance with part I of chapter 607.

1145 Section 37. Paragraph (d) of subsection (6) of section
1146 215.555, Florida Statutes, is amended to read:

1147 215.555 Florida Hurricane Catastrophe Fund.—

1148 (6) REVENUE BONDS.—

1149 (d) *State Board of Administration Finance Corporation.*—

1150 1. In addition to the findings and declarations in
1151 subsection (1), the Legislature also finds and declares that:

1152 a. The public benefits corporation created under this
1153 paragraph will provide a mechanism necessary for the cost-
1154 effective and efficient issuance of bonds. This mechanism will
1155 eliminate unnecessary costs in the bond issuance process,
1156 thereby increasing the amounts available to pay reimbursement
1157 for losses to property sustained as a result of hurricane
1158 damage.

1159 b. The purpose of such bonds is to fund reimbursements
1160 through the Florida Hurricane Catastrophe Fund to pay for the
1161 costs of construction, reconstruction, repair, restoration, and
1162 other costs associated with damage to properties of
1163 policyholders of covered policies due to the occurrence of a
1164 hurricane.

1165 c. The efficacy of the financing mechanism will be enhanced
1166 by the corporation's ownership of the assessments, by the
1167 insulation of the assessments from possible bankruptcy
1168 proceedings, and by covenants of the state with the
1169 corporation's bondholders.

1170 2.a. There is created a public benefits corporation, which



380342

1171 is an instrumentality of the state, to be known as the State
1172 Board of Administration Finance Corporation.

1173 b. The corporation shall operate under a five-member board
1174 of directors consisting of the Governor or a designee, the Chief
1175 Financial Officer or a designee, the Attorney General or a
1176 designee, the director of the Division of Bond Finance of the
1177 State Board of Administration, and the Chief Operating Officer
1178 of the Florida Hurricane Catastrophe Fund.

1179 c. The corporation has all of the powers of corporations
1180 under part I of chapter 607 and under chapter 617, subject only
1181 to ~~the provisions of~~ this subsection.

1182 d. The corporation may issue bonds and engage in such other
1183 financial transactions as are necessary to provide sufficient
1184 funds to achieve the purposes of this section.

1185 e. The corporation may invest in any of the investments
1186 authorized under s. 215.47.

1187 f. There shall be no liability on the part of, and no cause
1188 of action shall arise against, any board members or employees of
1189 the corporation for any actions taken by them in the performance
1190 of their duties under this paragraph.

1191 3.a. In actions under chapter 75 to validate any bonds
1192 issued by the corporation, the notice required under ~~by~~ s. 75.06
1193 shall be published in two newspapers of general circulation in
1194 the state, and the complaint and order of the court shall be
1195 served only on the State Attorney of the Second Judicial
1196 Circuit.

1197 b. The state hereby covenants with holders of bonds of the
1198 corporation that the state will not repeal or abrogate the power
1199 of the board to direct the Office of Insurance Regulation to



380342

1200 levy the assessments and to collect the proceeds of the revenues
1201 pledged to the payment of such bonds as long as any such bonds
1202 remain outstanding unless adequate provision has been made for
1203 the payment of such bonds pursuant to the documents authorizing
1204 the issuance of such bonds.

1205 4. The bonds of the corporation are not a debt of the state
1206 or of any political subdivision, and neither the state nor any
1207 political subdivision is liable on such bonds. The corporation
1208 does not have the power to pledge the credit, the revenues, or
1209 the taxing power of the state or of any political subdivision.
1210 The credit, revenues, or taxing power of the state or of any
1211 political subdivision shall not be deemed to be pledged to the
1212 payment of any bonds of the corporation.

1213 5.a. The property, revenues, and other assets of the
1214 corporation; the transactions and operations of the corporation
1215 and the income from such transactions and operations; and all
1216 bonds issued under this paragraph and interest on such bonds are
1217 exempt from taxation by the state and any political subdivision,
1218 including the intangibles tax under chapter 199 and the income
1219 tax under chapter 220. This exemption does not apply to any tax
1220 imposed by chapter 220 on interest, income, or profits on debt
1221 obligations owned by corporations other than the State Board of
1222 Administration Finance Corporation.

1223 b. All bonds of the corporation shall be and constitute
1224 legal investments without limitation for all public bodies of
1225 this state; for all banks, trust companies, savings banks,
1226 savings associations, savings and loan associations, and
1227 investment companies; for all administrators, executors,
1228 trustees, and other fiduciaries; for all insurance companies and



380342

1229 associations and other persons carrying on an insurance
1230 business; and for all other persons who are now or may hereafter
1231 be authorized to invest in bonds or other obligations of the
1232 state and shall be and constitute eligible securities to be
1233 deposited as collateral for the security of any state, county,
1234 municipal, or other public funds. This sub-subparagraph is ~~shall~~
1235 ~~be considered as~~ additional and supplemental authority and may
1236 ~~shall~~ not be limited without specific reference to this sub-
1237 subparagraph.

1238 6. The corporation and its corporate existence continues
1239 ~~shall continue~~ until terminated by law; however, ~~no~~ such law may
1240 not shall take effect as long as the corporation has bonds
1241 outstanding unless adequate provision has been made for the
1242 payment of such bonds pursuant to the documents authorizing the
1243 issuance of such bonds. Upon termination of the existence of the
1244 corporation, all of its rights and properties in excess of its
1245 obligations shall pass to and be vested in the state.

1246 7. The State Board of Administration Finance Corporation is
1247 for all purposes the successor to the Florida Hurricane
1248 Catastrophe Fund Finance Corporation.

1249 Section 38. Subsection (1) of section 243.54, Florida
1250 Statutes, is amended to read:

1251 243.54 Powers of the authority.—The purpose of the
1252 authority is to assist institutions of higher education in
1253 constructing, financing, and refinancing projects throughout the
1254 state and, for this purpose, the authority may:

1255 (1) Exercise all powers granted to corporations under part
1256 I of the Florida Business Corporation Act, chapter 607.

1257 Section 39. Section 310.171, Florida Statutes, is amended



380342

1258 to read:

1259 310.171 Pilots may incorporate themselves.—Any one or more
1260 licensed state pilots may incorporate in the manner provided
1261 under part I of chapter 607 or chapter 621.

1262 Section 40. Section 310.181, Florida Statutes, is amended
1263 to read:

1264 310.181 Corporate powers.—All the rights, powers, and
1265 liabilities conferred or imposed by the laws of Florida relating
1266 to corporations for profit organized under part I of chapter 607
1267 or under chapter 608 before January 1, 1976, or to corporations
1268 organized under chapter 621 ~~shall~~ apply to corporations
1269 organized pursuant to s. 310.171.

1270 Section 41. Paragraph (c) of subsection (4) of section
1271 329.10, Florida Statutes, is amended to read:

1272 329.10 Aircraft registration.—

1273 (4) It is a violation of this section for any person or
1274 corporate entity to knowingly supply false information to any
1275 governmental entity in regard to ownership by it or another
1276 firm, business, or corporation of an aircraft in or operated in
1277 this state if it is determined that such corporate entity or
1278 other firm, business, or corporation:

1279 (c) Has lapsed into a state of no longer being a legal
1280 entity in this state as defined in part I of chapter 607 or s.
1281 865.09, and no documented attempt has been made to correct such
1282 information with the governmental entity for a period of 90 days
1283 after the date on which such lapse took effect with the
1284 Secretary of State.

1285 Section 42. Subsection (1) of section 339.412, Florida
1286 Statutes, is amended to read:



380342

1287 339.412 Powers of corporation.—As to designated projects
1288 and in addition to other powers prescribed by law, a corporation
1289 may exercise the following powers with respect to the promotion
1290 and development of transportation facilities, pursuant to a
1291 written contract for the same, together with all powers
1292 incidental thereto or necessary for the performance of those
1293 hereinafter stated:

1294 (1) The corporation may exercise all the powers as granted
1295 by the department to work directly with landowners, local and
1296 state governmental agencies, elected officials, and any other
1297 person to support those activities required to promote and
1298 develop the projects. These activities shall include:

1299 (a) Acquiring, holding, investing, and administering
1300 property and transferring title of such property to the
1301 department for development of projects on behalf of the
1302 department;

1303 (b) Performing preliminary and final alignment studies in a
1304 manner consistent with state and federal laws;

1305 (c) Receiving contributions of land for rights-of-way and
1306 cash donations to be applied to the purchase of rights-of-way
1307 not donated or to be applied to the design or construction of
1308 the projects;

1309 (d) Reviewing candidates for advisory directorships and
1310 adding or removing such advisory directors as may be
1311 appropriate;

1312 (e) Retaining such administrative staff and legal, public
1313 relations, and engineering services as may be required for the
1314 development of the projects and paying such employees and
1315 consultants from funds donated for this purpose;



380342

1316 (f) Preparing such exhibits, right-of-way documents,
1317 environmental reports, schematics, and preliminary and final
1318 engineering plans as are necessary for the development of the
1319 projects;

1320 (g) Borrowing money to meet any expenses or needs
1321 associated with the regular operations of the corporation or a
1322 particular project; provided, however, that no corporation shall
1323 have the power to issue bonds, the provisions of part I of
1324 chapter ~~chapters~~ 607 and chapter 617 notwithstanding;

1325 (h) Making official presentations to the state and other
1326 affected agencies or groups concerning the development of the
1327 projects;

1328 (i) Issuing press releases and other material to promote
1329 the activities of the projects; and

1330 (j) Performing any other functions requested by the
1331 department in order to promote and develop the projects.

1332

1333 Nothing in this act empowers the corporation to enter into any
1334 contracts for construction or to undertake any construction, on
1335 behalf of the department.

1336 Section 43. Subsection (4) of section 420.101, Florida
1337 Statutes, is amended to read:

1338 420.101 Housing Development Corporation of Florida;
1339 creation, membership, and purposes.—

1340 (4) Whenever the articles of incorporation have been filed
1341 in the Department of State and approved by it and all filing
1342 fees and taxes prescribed by part I of chapter 607 have been
1343 paid, the subscribers and their successors and assigns shall
1344 constitute a corporation, and the corporation shall then be



380342

1345 authorized to commence business, and stock thereof to the extent
1346 herein or hereafter duly authorized may from time to time be
1347 issued.

1348 Section 44. Section 420.111, Florida Statutes, is amended
1349 to read:

1350 420.111 Housing Development Corporation of Florida;
1351 additional powers.—In furtherance of its purposes and in
1352 addition to the powers now or hereafter conferred on business
1353 corporations by part I of chapter 607, the corporation shall,
1354 subject to the restrictions and limitations ~~herein~~ contained in
1355 this section, have the following powers:

1356 (1) To elect, appoint, and employ officers, agents and
1357 employees and to make contracts and incur liabilities for any of
1358 the purposes of the corporation, except that the corporation may
1359 ~~shall~~ not incur any secondary liability by way of guaranty or
1360 endorsement of the obligations of any person, firm, corporation,
1361 joint-stock company, association, or trust, or in any other
1362 manner.

1363 (2) To borrow money from its stockholders, other financial
1364 institutions, and state and federal agencies for any of the
1365 purposes of the corporation; to issue therefor its bonds,
1366 debentures, notes, or other evidences of indebtedness, whether
1367 secured or unsecured, and to secure the same by mortgage,
1368 pledge, deed of trust, or other lien on its property,
1369 franchises, rights, and privileges of every kind and nature, or
1370 any part thereof or interest therein, without securing
1371 stockholder approval.

1372 (3) To make loans to any person, firm, corporation, joint-
1373 stock company, association, or trust and to regulate the terms



380342

1374 and conditions with respect to any such loans and the charges
1375 for interest and service connected therewith, provided subsidies
1376 may be in the form of below market interest rates or such other
1377 assistance as determined by the board with the concurrence of
1378 the applicable regulatory agencies governing the several
1379 stockholder industries.

1380 (4) To purchase, receive, hold, lease, or otherwise
1381 acquire, and to sell, convey, transfer, lease, or otherwise
1382 dispose of, real and personal property, together with such
1383 rights and privileges as may be incidental and appurtenant
1384 thereto and the use thereof, including, but not restricted to,
1385 any real or personal property acquired by the corporation from
1386 time to time in the satisfaction of debts or enforcement of
1387 obligations.

1388 (5) For the purposes of foreclosure, to acquire the good
1389 will, business, rights, real and personal property, and other
1390 assets, or any part thereof, or interest therein, of any
1391 persons, firms, corporations, joint-stock companies,
1392 associations or trusts, and to assume, undertake, or pay the
1393 obligations, debts and liabilities of any such person, firm,
1394 corporation, joint-stock company, association or trust; to
1395 acquire improved or unimproved real estate for the purpose of
1396 constructing new housing or rehabilitation thereof; for the
1397 purposes of disposing of such real estate to others for the
1398 construction of housing or rehabilitation thereof; and to
1399 acquire, construct or reconstruct, alter, repair, maintain,
1400 operate, sell, convey, transfer, lease, or otherwise dispose of
1401 such housing, provided, however that nothing herein contained
1402 shall authorize the acquisition, construction, reconstruction,



380342

1403 or operation of any public lodging establishment as defined in
1404 chapter 509.

1405 (6) To acquire, subscribe for, own, hold, sell, assign,
1406 transfer, mortgage, pledge, or otherwise dispose of the stock,
1407 shares, bonds, debentures, notes, or other securities and
1408 evidences of interest in, or indebtedness of, any person, firm,
1409 corporation, joint-stock company, association, or trust, and,
1410 while the owner or holder thereof, to exercise all the rights,
1411 powers, and privileges of ownership, including the right to vote
1412 thereon.

1413 (7) To mortgage, pledge, or otherwise encumber any
1414 property, right, or thing of value, acquired pursuant to the
1415 powers contained in subsection (4), subsection (5), or
1416 subsection (6), as security for the payment of any part of the
1417 purchase price thereof.

1418 (8) To cooperate with, and avail itself of the facilities
1419 of, the United States Department of Housing and Urban
1420 Development, the Department of Economic Opportunity, and any
1421 other similar local, state, or Federal Government agency; and to
1422 cooperate with and assist, and otherwise encourage,
1423 organizations in the various communities of the state on the
1424 promotion, assistance, and development of the housing and
1425 economic welfare of such communities or of this state or any
1426 part thereof.

1427 (9) To do all acts and things necessary or convenient to
1428 carry out the powers expressly granted in this part.

1429 Section 45. Subsection (2) of section 420.161, Florida
1430 Statutes, is amended to read:

1431 420.161 Housing Development Corporation of Florida; period



380342

1432 of existence; method of dissolution.-

1433 (2) The corporation may, upon the affirmative vote of two-
1434 thirds of the votes to which the stockholders are ~~shall be~~
1435 entitled, dissolve the said corporation as provided under part I
1436 of by chapter 607, as long as that part does insofar as chapter
1437 ~~607 is not in conflict with the provisions of~~ this act. Upon any
1438 dissolution of the corporation, ~~none of~~ the corporation's assets
1439 may not shall be distributed to the stockholders until all sums
1440 due the members of the corporation as creditors thereof have
1441 been paid in full.

1442 Section 46. Subsection (9) of section 440.02, Florida
1443 Statutes, is amended to read:

1444 440.02 Definitions.—When used in this chapter, unless the
1445 context clearly requires otherwise, the following terms shall
1446 have the following meanings:

1447 (9) "Corporate officer" or "officer of a corporation" means
1448 any person who fills an office provided for in the corporate
1449 charter or articles of incorporation filed with the Division of
1450 Corporations of the Department of State or as authorized
1451 ~~permitted~~ or required under part I of by chapter 607. The term
1452 "officer of a corporation" includes a member owning at least 10
1453 percent of a limited liability company created and approved
1454 under chapter 608.

1455 Section 47. Paragraph (d) of subsection (10) of section
1456 440.386, Florida Statutes, is amended to read:

1457 440.386 Individual self-insurers' insolvency; conservation;
1458 liquidation.—

1459 (10) TRANSFERS PRIOR TO PETITION.—

1460 (d) The personal liability of the officers or directors of



380342

1461 an insolvent individual self-insurer is ~~shall be~~ subject to part
1462 I of the provisions of chapter 607 and the penalties provided
1463 therein.

1464 Section 48. Subsection (3) of section 609.08, Florida
1465 Statutes, is amended to read:

1466 609.08 Merger of association into wholly owned subsidiary
1467 corporation; dissenters' rights of appraisal.-

1468 (3) If the surviving corporation is to be governed by the
1469 laws of any jurisdiction other than this state, it shall comply
1470 with part I of the provisions of chapter 607 with respect to
1471 foreign corporations if it is to transact business in this
1472 state, and in every case it shall file with the Department of
1473 State of this state:

1474 (a) An agreement that it may be served with process in this
1475 state in any proceeding for the enforcement of any obligation of
1476 the association and in any proceeding for the enforcement of any
1477 rights under the declaration of trust of the association of a
1478 dissenting shareholder of the association against the surviving
1479 corporation.

1480 (b) An irrevocable appointment of the Secretary of State as
1481 its agent to accept service of process in any such proceeding.

1482 (c) An agreement that it will promptly pay to the
1483 dissenting shareholders of the association the amount, if any,
1484 to which they are ~~shall be~~ entitled under ~~the provisions of~~ its
1485 declaration of trust with respect to the rights of dissenting
1486 shareholders.

1487 Section 49. Section 617.1908, Florida Statutes, is amended
1488 to read:

1489 617.1908 Applicability of Florida Business Corporation



380342

1490 Act.—Except as ~~otherwise~~ made applicable by specific reference
1491 in any other section of this chapter, part I ~~the provisions~~ of
1492 chapter 607, the Florida Business Corporation Act, does ~~shall~~
1493 not apply to any corporations not for profit.

1494 Section 50. Section 618.221, Florida Statutes, is amended
1495 to read:

1496 618.221 Conversion into a corporation for profit.—Any
1497 association incorporated under or that has adopted the
1498 provisions of this chapter, may, by a majority vote of its
1499 stockholders or members be brought under part I of the
1500 ~~provisions of~~ chapter 607, as a corporation for profit by
1501 surrendering all right to carry on its business under this
1502 chapter, and the privileges and immunities incident thereto. It
1503 shall make out in duplicate a statement signed and sworn to by
1504 its directors to the effect that the association has, by a
1505 majority vote of its stockholders or members, decided to
1506 surrender all rights, powers, and privileges as a nonprofit
1507 cooperative marketing association under this chapter and to do
1508 business under and be bound by part I of the provisions of said
1509 chapter 607, as a corporation for profit and has authorized all
1510 changes accordingly. Articles of incorporation shall be
1511 delivered to the Department of State for filing as required
1512 under part I of chapter 607 ~~in and by s. 607.164~~, except that
1513 they shall be signed by the members of the then board of
1514 directors. The filing fees and taxes shall be as provided under
1515 part I of ~~in~~ chapter 607. Such articles of incorporation shall
1516 adequately protect and preserve the relative rights of the
1517 stockholders or members of the association so converting into a
1518 corporation for profit; provided that no rights or obligations



380342

1519 due any stockholder or member of such association or any other
1520 person, firm, or corporation which has not been waived or
1521 satisfied shall be impaired by such conversion into a
1522 corporation for profit as herein authorized.

1523 Section 51. Section 619.04, Florida Statutes, is amended to
1524 read:

1525 619.04 Articles of incorporation.—Each association formed
1526 under this chapter must prepare and file articles of
1527 incorporation in the same manner and under the same regulations
1528 as required under part I of chapter 607, and therein shall set
1529 forth:

1530 (1) The name of the association.

1531 (2) The purpose for which it is formed.

1532 (3) The place where its principal business will be
1533 transacted.

1534 (4) The term for which it is to exist, not exceeding 50
1535 years.

1536 (5) The number of directors thereof, which must not be less
1537 than three and which may be any number in excess thereof, and
1538 the names and residences of those selected for the first year
1539 and until their successors shall have been elected and shall
1540 have accepted office.

1541 (6) Whether the voting power and the property rights and
1542 interest of each member shall be equal, or unequal, and if
1543 unequal these articles shall set forth a general rule applicable
1544 to all members by which the voting power and the property rights
1545 and interests, respectively, of each member may and shall be
1546 determined and fixed, but the association shall have power to
1547 admit new members, who shall be entitled to vote and to share in



380342

1548 the property of the association with the old members, in
1549 accordance with such general rule. This provision of the
1550 articles of incorporation may ~~shall~~ not be altered, amended, or
1551 repealed except by the unanimous written consent or the vote of
1552 all the members.

1553 (7) Said articles must be subscribed by the original
1554 members and acknowledged by one of them before an officer
1555 authorized by the law of this state to take and certify
1556 acknowledgments of deeds of conveyance, and shall be filed in
1557 accordance with the provisions of law, and when so filed the
1558 said articles of incorporation or certified copies thereof shall
1559 be received in all the courts of this state and other places as
1560 prima facie evidence of the facts contained therein.

1561 Section 52. Subsection (3) of section 624.430, Florida
1562 Statutes, is amended to read:

1563 624.430 Withdrawal of insurer or discontinuance of writing
1564 certain kinds or lines of insurance.—

1565 (3) Upon office approval of the surrender of the
1566 certificate of authority of a domestic property and casualty
1567 insurer that is a corporation, the insurer may initiate the
1568 dissolution of the corporation in accordance with the applicable
1569 provisions of part I of chapter 607.

1570 Section 53. Subsection (1) of section 624.462, Florida
1571 Statutes, is amended to read:

1572 624.462 Commercial self-insurance funds.—

1573 (1) Any group of persons may form a commercial self-
1574 insurance fund for the purpose of pooling and spreading
1575 liabilities of its group members in any commercial property or
1576 casualty risk or surety insurance. Any fund established pursuant



380342

1577 to subparagraph (2)(a)1. may be organized as a corporation under
1578 part I of chapter 607.

1579 Section 54. Subsection (3) of section 624.489, Florida
1580 Statutes, is amended to read:

1581 624.489 Liability of trustees of self-insurance trust fund
1582 and directors of self-insurance funds operating as
1583 corporations.—

1584 (3) The immunities from liability provided in this section
1585 with respect to trustees also apply to members of the board of
1586 directors of a commercial self-insurance fund organized as a
1587 corporation under part I of chapter 607 if the board of
1588 directors has contracted with an administrator authorized under
1589 s. 626.88 to administer the day-to-day affairs of the fund.

1590 Section 55. Section 628.041, Florida Statutes, is amended
1591 to read:

1592 628.041 Applicability of general corporation statutes.—The
1593 applicable statutes of this state relating to the powers and
1594 procedures of domestic private corporations formed for profit
1595 shall apply to domestic stock insurers and to domestic mutual
1596 insurers, except:

1597 (1) As to any domestic mutual insurers incorporated
1598 pursuant to chapter 617, which chapter shall govern such
1599 insurers when in conflict with part I of chapter 607; and

1600 (2) When in conflict with the express provisions of this
1601 code.

1602 Section 56. Subsection (4) of section 631.262, Florida
1603 Statutes, is amended to read:

1604 631.262 Transfers prior to petition.—

1605 (4) The personal liability of the officers or directors of



380342

1606 an insolvent insurer is ~~shall be~~ subject to part I of the
1607 ~~provisions of~~ chapter 607 and the penalties provided therein.

1608 Section 57. Subsection (1) of section 636.204, Florida
1609 Statutes, is amended to read:

1610 636.204 License required.—

1611 (1) Before doing business in this state as a discount
1612 medical plan organization, an entity must be a corporation, a
1613 limited liability company, or a limited partnership,
1614 incorporated, organized, formed, or registered under the laws of
1615 this state or authorized to transact business in this state in
1616 accordance with part I of chapter 607, chapter 608, chapter 617,
1617 chapter 620, or chapter 865, and must be licensed by the office
1618 as a discount medical plan organization or be licensed by the
1619 office pursuant to chapter 624, part I of this chapter, or
1620 chapter 641.

1621 Section 58. Section 641.2015, Florida Statutes, is amended
1622 to read:

1623 641.2015 Incorporation required.—On or after October 1,
1624 1985, any entity that has not yet obtained a certificate of
1625 authority to operate a health maintenance organization in this
1626 state shall be incorporated or shall be a division of a
1627 corporation formed under the provisions of either part I of
1628 chapter 607 or chapter 617 or shall be a public entity that is
1629 organized as a political subdivision. In the case of a division
1630 of a corporation, the financial requirements of this part shall
1631 apply to the entire corporation. Incorporation shall not be
1632 required of any entity which has already been issued an initial
1633 certificate of authority prior to this date and which is not a
1634 corporation on October 1, 1985, or which is incorporated in any



380342

1635 other state on October 1, 1985; nor shall incorporation be
1636 required on renewal of any certificate of authority by such an
1637 organization or be required of a public entity that is organized
1638 as a political subdivision.

1639 Section 59. Subsection (1) of section 655.0201, Florida
1640 Statutes, is amended to read:

1641 655.0201 Service of process, notice, or demand on financial
1642 institutions.—

1643 (1) Process against any financial institution authorized by
1644 federal or state law to transact business in this state may be
1645 served in accordance with chapter 48, chapter 49, part I of
1646 chapter 607, or chapter 608, as appropriate.

1647 Section 60. Subsection (2) of section 658.23, Florida
1648 Statutes, is amended to read:

1649 658.23 Submission of articles of incorporation; contents;
1650 form; approval; filing; commencement of corporate existence;
1651 bylaws.—

1652 (2) The articles of incorporation shall contain:

1653 (a) The name of the proposed bank or trust company.

1654 (b) The general nature of the business to be transacted or
1655 a statement that the corporation may engage in any activity or
1656 business permitted by law. Such statement shall authorize all
1657 such activities and business by the corporation.

1658 (c) The amount of capital stock authorized, showing the
1659 maximum number of shares of par value common stock and of
1660 preferred stock, and of every kind, class, or series of each,
1661 together with the distinguishing characteristics and the par
1662 value of all shares.

1663 (d) The amount of capital with which the corporation will



380342

1664 begin business, which may ~~shall~~ not be less than the amount
1665 required by the office pursuant to s. 658.21.

1666 (e) A provision that the corporation is to have perpetual
1667 existence unless existence is terminated pursuant to the
1668 financial institutions codes.

1669 (f) The initial street address of the main office of the
1670 corporation, which shall be in this state.

1671 (g) The number of directors, which shall be five or more,
1672 and the names and street addresses of the members of the initial
1673 board of directors.

1674 (h) A provision for preemptive rights, if applicable.

1675 (i) A provision authorizing the board of directors to
1676 appoint additional directors, pursuant to s. 658.33, if
1677 applicable.

1678
1679 The office shall provide to the proposed directors form articles
1680 of incorporation which must ~~shall~~ include only those provisions
1681 required under ~~by~~ this section or under part I of ~~by~~ chapter
1682 607. The form articles shall be acknowledged by the proposed
1683 directors and returned to the office for filing with the
1684 Department of State.

1685 Section 61. Paragraph (c) of subsection (11) of section
1686 658.2953, Florida Statutes, is amended to read:

1687 658.2953 Interstate branching.—

1688 (11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

1689 (c) An out-of-state bank may establish and maintain a de
1690 novo branch or acquire a branch in this state upon compliance
1691 with part I of chapter 607 or chapter 608 relating to doing
1692 business in this state as a foreign business entity, including



380342

1693 maintaining a registered agent for service of process and other
1694 legal notice pursuant to s. 655.0201.

1695 Section 62. Section 658.30, Florida Statutes, is amended to
1696 read:

1697 658.30 Application of the Florida Business Corporation
1698 Act.—

1699 (1) When not in direct conflict with or superseded by
1700 specific provisions of the financial institutions codes, the
1701 provisions of the Florida Business Corporation Act, part I of
1702 chapter 607, ~~shall~~ extend to state banks and trust companies
1703 formed under the financial institutions codes. This section
1704 shall be liberally construed to accomplish the purposes stated
1705 herein.

1706 (2) Without limiting the generality of subsection (1),
1707 stockholders, directors, and committees of state banks and trust
1708 companies may hold meetings in any manner authorized ~~permitted~~
1709 by part I of chapter 607, and any action by stockholders,
1710 directors, or committees required or authorized ~~permitted~~ to be
1711 taken at a meeting may be taken without a meeting in any manner
1712 authorized ~~provided or permitted~~ by part I of chapter 607.

1713 Section 63. Subsection (3) of section 658.36, Florida
1714 Statutes, is amended to read:

1715 658.36 Changes in capital.—

1716 (3) If a bank or trust company's capital accounts have been
1717 diminished by losses to less than the minimum required pursuant
1718 to the financial institutions codes, the market value of its
1719 shares of capital stock is less than the present par value, and
1720 the bank or trust company cannot reasonably issue and sell new
1721 shares of stock to restore its capital accounts at a share price



380342

1722 of par value or greater of the previously issued capital stock,
1723 the office, notwithstanding any other provisions of part I of
1724 chapter 607 or the financial institutions codes, may approve
1725 special stock offering plans.

1726 (a) Such plans may include, but are not limited to,
1727 mechanisms for stock splits including reverse splits;
1728 revaluations of par value of outstanding stock; changes in
1729 voting rights, dividends, or other preferences; and creation of
1730 new classes of stock.

1731 (b) The plan must be approved by majority vote of the bank
1732 or trust company's entire board of directors and by holders of
1733 two-thirds of the outstanding shares of stock.

1734 (c) The office shall disapprove a plan that provides unfair
1735 or disproportionate benefits to existing shareholders,
1736 directors, executive officers, or their related interests. The
1737 office shall also disapprove any plan that is not likely to
1738 restore the capital accounts to sufficient levels to achieve a
1739 sustainable, safe, and sound financial institution.

1740 (d) For any bank or trust company that the office
1741 determines to be a failing financial institution pursuant to s.
1742 655.4185, the office may approve special stock offering plans
1743 without a vote of the shareholders.

1744 Section 64. Section 663.03, Florida Statutes, is amended to
1745 read:

1746 663.03 Applicability of the Florida Business Corporation
1747 Act chapter 607.—Notwithstanding s. 607.01401(12) ~~the definition~~
1748 ~~of the term "foreign corporation" appearing in s. 607.01401,~~ all
1749 ~~of~~ the provisions of part I of chapter 607 not in conflict with
1750 the financial institutions codes which relate to foreign



380342

1751 corporations ~~shall~~ apply to all international banking
1752 corporations and their offices doing business in this state.

1753 Section 65. Subsection (3) of section 663.04, Florida
1754 Statutes, is amended to read:

1755 663.04 Requirements for carrying on financial institution
1756 business.—An international banking corporation or trust company,
1757 or any affiliate, subsidiary, or other person or business entity
1758 acting as an agent for, on behalf of, or for the benefit of such
1759 international banking corporation or trust company who engages
1760 in such activities from an office located in this state, may not
1761 transact a banking or trust business, or maintain in this state
1762 any office for carrying on such business, or any part thereof,
1763 unless such corporation, trust company, affiliate, subsidiary,
1764 person, or business entity:

1765 (3) Has filed with the office a certified copy of that
1766 information required to be supplied to the Department of State
1767 by those provisions of part I of chapter 607 which are
1768 applicable to foreign corporations.

1769 Section 66. Paragraph (a) of subsection (1) of section
1770 663.301, Florida Statutes, is amended to read:

1771 663.301 Definitions.—

1772 (1) As used in this part:

1773 (a) "International development bank" means a corporation
1774 established for the purpose of promoting development in foreign
1775 countries by directly or indirectly making funding available to
1776 foreign business enterprises or foreign governments or by
1777 providing financing in connection with import-export
1778 transactions. Subject to the limitations contained in s.
1779 663.313, an international development bank may be organized



380342

1780 ~~either~~ under chapter 617 as a corporation not for profit or
1781 under part I of chapter 607 as a corporation for profit.

1782 Section 67. Subsection (2) of section 663.306, Florida
1783 Statutes, is amended to read:

1784 663.306 Decision by office.—The office may, in its
1785 discretion, approve or disapprove the application, but it shall
1786 not approve the application unless it finds that:

1787 (2) The proposed capital structure is adequate, but in no
1788 case may the paid-in capital stock be:

1789 (a) Less than \$400,000 in the case of an international
1790 development bank organized under chapter 617 as a corporation
1791 not for profit; or

1792 (b) The amount required for a state bank in the case of an
1793 international development bank organized under part I of chapter
1794 607 as a corporation for profit.

1795
1796 The office may disallow any illegally obtained currency,
1797 monetary instruments, funds, or other financial resources from
1798 the capitalization requirements of this section.

1799 Section 68. Subsection (4) of section 663.313, Florida
1800 Statutes, is amended to read:

1801 663.313 Ownership of stock.—

1802 (4) All of the shares of voting stock of an international
1803 development bank organized under part I of chapter 607 as a
1804 corporation for profit shall be owned by a regional development
1805 bank or by one or more wholly owned subsidiaries of a regional
1806 development bank.

1807 Section 69. Subsection (2) of section 718.111, Florida
1808 Statutes, is amended to read:



380342

1809 718.111 The association.—

1810 (2) POWERS AND DUTIES.—The powers and duties of the
1811 association include those set forth in this section and, except
1812 as expressly limited or restricted in this chapter, those set
1813 forth in the declaration and bylaws and part I of chapter
1814 ~~chapters~~ 607 and chapter 617, as applicable.

1815 Section 70. Subsection (10) of section 719.104, Florida
1816 Statutes, is amended to read:

1817 719.104 Cooperatives; access to units; records; financial
1818 reports; assessments; purchase of leases.—

1819 (10) POWERS AND DUTIES.—The powers and duties of the
1820 association include those set forth in this section and, except
1821 as expressly limited or restricted in this chapter, those set
1822 forth in the articles of incorporation and bylaws and part I of
1823 chapter ~~chapters~~ 607 and chapter 617, as applicable.

1824 Section 71. Subsection (5) of section 720.302, Florida
1825 Statutes, is amended to read:

1826 720.302 Purposes, scope, and application.—

1827 (5) Unless expressly stated to the contrary, corporations
1828 that operate residential homeowners' associations in this state
1829 shall be governed by and subject to part I of chapter 607, if
1830 the association was incorporated under that part ~~chapter~~, or to
1831 chapter 617, if the association was incorporated under that
1832 chapter, and this chapter. This subsection is intended to
1833 clarify existing law.

1834 Section 72. Paragraph (c) of subsection (1) of section
1835 720.306, Florida Statutes, is amended to read:

1836 720.306 Meetings of members; voting and election
1837 procedures; amendments.—



380342

1838 (1) QUORUM; AMENDMENTS.—

1839 (c) Unless otherwise provided in the governing documents as
1840 originally recorded or permitted by this chapter or chapter 617,
1841 an amendment may not materially and adversely alter the
1842 proportionate voting interest appurtenant to a parcel or
1843 increase the proportion or percentage by which a parcel shares
1844 in the common expenses of the association unless the record
1845 parcel owner and all record owners of liens on the parcels join
1846 in the execution of the amendment. For purposes of this section,
1847 a change in quorum requirements is not an alteration of voting
1848 interests. The merger or consolidation of one or more
1849 associations under a plan of merger or consolidation under part
1850 I of chapter 607 or chapter 617 is shall not be considered a
1851 material or adverse alteration of the proportionate voting
1852 interest appurtenant to a parcel.

1853 Section 73. Paragraph (a) of subsection (1) of section
1854 766.101, Florida Statutes, is amended to read:

1855 766.101 Medical review committee, immunity from liability.—

1856 (1) As used in this section:

1857 (a) The term “medical review committee” or “committee”
1858 means:

1859 1.a. A committee of a hospital or ambulatory surgical
1860 center licensed under chapter 395 or a health maintenance
1861 organization certificated under part I of chapter 641;IT

1862 b. A committee of a physician-hospital organization, a
1863 provider-sponsored organization, or an integrated delivery
1864 system;IT

1865 c. A committee of a state or local professional society of
1866 health care providers;IT



380342

1867 d. A committee of a medical staff of a licensed hospital or
1868 nursing home, provided the medical staff operates pursuant to
1869 written bylaws that have been approved by the governing board of
1870 the hospital or nursing home;IT

1871 e. A committee of the Department of Corrections or the
1872 Correctional Medical Authority as created under s. 945.602, or
1873 employees, agents, or consultants of either the department or
1874 the authority or both;IT

1875 f. A committee of a professional service corporation formed
1876 under chapter 621 or a corporation organized under part I of
1877 chapter 607 or chapter 617, which is formed and operated for the
1878 practice of medicine as defined in s. 458.305(3), and which has
1879 at least 25 health care providers who routinely provide health
1880 care services directly to patients;IT

1881 g. A committee of the Department of Children and Families
1882 ~~Family Services~~ which includes employees, agents, or consultants
1883 to the department as deemed necessary to provide peer review,
1884 utilization review, and mortality review of treatment services
1885 provided pursuant to chapters 394, 397, and 916;IT

1886 h. A committee of a mental health treatment facility
1887 licensed under chapter 394 or a community mental health center
1888 as defined in s. 394.907, provided the quality assurance program
1889 operates pursuant to the guidelines that ~~which~~ have been
1890 approved by the governing board of the agency;IT

1891 i. A committee of a substance abuse treatment and education
1892 prevention program licensed under chapter 397 provided the
1893 quality assurance program operates pursuant to the guidelines
1894 that ~~which~~ have been approved by the governing board of the
1895 agency;IT



380342

1896 j. A peer review or utilization review committee organized
1897 under chapter 440;~~τ~~

1898 k. A committee of the Department of Health, a county health
1899 department, healthy start coalition, or certified rural health
1900 network, when reviewing quality of care, or employees of these
1901 entities when reviewing mortality records;~~τ~~ or

1902 1. A continuous quality improvement committee of a pharmacy
1903 licensed pursuant to chapter 465,

1904
1905 which committee is formed to evaluate and improve the quality of
1906 health care rendered by providers of health service, to
1907 determine that health services rendered were professionally
1908 indicated or were performed in compliance with the applicable
1909 standard of care, or that the cost of health care rendered was
1910 considered reasonable by the providers of professional health
1911 services in the area; or

1912 2. A committee of an insurer, self-insurer, or joint
1913 underwriting association of medical malpractice insurance, or
1914 other persons conducting review under s. 766.106.

1915 Section 74. Subsection (14) of section 865.09, Florida
1916 Statutes, is amended to read:

1917 865.09 Fictitious name registration.—

1918 (14) PROHIBITION.—A fictitious name registered as provided
1919 in this section may not contain the words "Corporation" or
1920 "Incorporated," or the abbreviations "Corp." or "Inc.," unless
1921 the person or business for which the name is registered is
1922 incorporated or has obtained a certificate of authority to
1923 transact business in this state pursuant to part I of chapter
1924 607 or chapter 617.



380342

1925 Section 75. This act shall take effect July 1, 2014.

1926

1927 ===== T I T L E A M E N D M E N T =====

1928 And the title is amended as follows:

1929 Delete everything before the enacting clause
1930 and insert:

1931 A bill to be entitled
1932 An act relating to business organizations; amending s.
1933 605.0112, F.S.; providing additional exceptions
1934 regarding the requirement that limited liability
1935 company names be distinguishable from the names of
1936 other entities or filings; specifying differences in
1937 names which are not considered distinguishable;
1938 designating part I of ch. 607, F.S., entitled
1939 "Corporations"; amending s. 607.0101, F.S.; revising a
1940 provision to conform to changes made by the act;
1941 amending s. 607.0401, F.S.; providing additional
1942 exceptions regarding the requirement that corporate
1943 names be distinguishable; specifying differences in
1944 corporate names which are not considered
1945 distinguishable; amending s. 607.1302, F.S.; providing
1946 that the amendment of articles of incorporation or the
1947 merger, conversion, or share exchange of a social
1948 purpose or benefit corporation entitles the
1949 shareholders to appraisal rights; creating part II of
1950 ch. 607, F.S., entitled "Social Purpose Corporations";
1951 creating s. 607.501, F.S.; providing application and
1952 effect; creating s. 607.502, F.S.; providing
1953 definitions; creating s. 607.503, F.S.; establishing



380342

1954 requirements for the formation of a social purpose
1955 corporation; creating s. 607.504, F.S.; providing
1956 procedures for an existing corporation to become a
1957 social purpose corporation; creating s. 607.505, F.S.;
1958 providing procedures for the termination of a social
1959 purpose corporation status; creating s. 607.506, F.S.;
1960 requiring that the corporate purpose must be to create
1961 a public benefit; providing criteria; creating s.
1962 607.507, F.S.; requiring that the directors of a
1963 social purpose corporation meet a standard of conduct;
1964 providing criteria for the standards; creating s.
1965 607.508, F.S.; authorizing the articles of
1966 incorporation of a social purpose corporation to
1967 provide for a benefit director; providing powers and
1968 duties of a benefit director; creating s. 607.509,
1969 F.S.; requiring that the officers of a social purpose
1970 corporation meet a standard of conduct; providing
1971 criteria for the standards of conduct; creating s.
1972 607.510, F.S.; authorizing a social purpose
1973 corporation to designate an officer as a benefit
1974 officer; providing for the powers and duties of a
1975 benefit officer; creating s. 607.511, F.S.;
1976 authorizing certain legal actions to be brought
1977 against a social purpose corporation, its officers, or
1978 its directors; creating s. 607.512, F.S.; requiring
1979 the board of directors to prepare an annual benefit
1980 report; providing criteria for the preparation of the
1981 report; creating s. 607.513, F.S.; establishing
1982 requirements for the availability and dissemination of



380342

1983 the annual report; authorizing a court to order
1984 dissemination of the report; providing criteria;
1985 creating part III of ch. 607, F.S., entitled "Benefit
1986 Corporations"; creating s. 607.601, F.S.; providing
1987 for application and effect; creating s. 607.602, F.S.;
1988 providing definitions; creating s. 607.603, F.S.;
1989 establishing requirements for the formation of a
1990 benefit corporation; creating s. 607.604, F.S.;
1991 providing procedures for an existing corporation to
1992 become a benefit corporation; creating s. 607.605,
1993 F.S.; providing procedures for the termination of a
1994 benefit corporation status; creating s. 607.606, F.S.;
1995 requiring that the corporate purpose be to create a
1996 public benefit; providing criteria; creating s.
1997 607.607, F.S.; requiring the directors of a benefit
1998 corporation to meet a standard of conduct; providing
1999 criteria for the standards; creating s. 607.608, F.S.;
2000 authorizing the articles of incorporation of a benefit
2001 corporation to provide for a benefit director;
2002 providing powers and duties of the benefit director;
2003 creating s. 607.609, F.S.; requiring the officers of a
2004 benefit corporation to meet a standard of conduct;
2005 providing criteria for the standards of conduct;
2006 creating s. 607.610, F.S.; authorizing a benefit
2007 corporation to designate an officer as a benefit
2008 officer; providing for the powers and duties of the
2009 benefit officer; creating s. 607.611, F.S.;
2010 authorizing certain legal actions to be brought
2011 against a benefit corporation, its officers, or its



380342

2012 directors; creating s. 607.612, F.S.; requiring the
2013 board of directors to prepare an annual benefit
2014 report; providing criteria for the preparation of the
2015 report; creating s. 607.613, F.S.; establishing
2016 requirements for the availability and dissemination of
2017 the annual report; authorizing a court to order
2018 dissemination of the report; amending ss. 617.0401 and
2019 620.1108, F.S; providing additional exceptions
2020 regarding the requirement that the names of entities
2021 be distinguishable; specifying differences in names
2022 which are not considered distinguishable; amending ss.
2023 48.091, 215.555, 243.54, 310.171, 310.181, 329.10,
2024 339.412, 420.101, 420.111, 420.161, 440.02, 440.386,
2025 609.08, 617.1908, 618.221, 619.04, 624.430, 624.462,
2026 624.489, 628.041, 631.262, 636.204, 641.2015,
2027 655.0201, 658.23, 658.2953, 658.30, 658.36, 663.03,
2028 663.04, 663.301, 663.306, 663.313, 718.111, 719.104,
2029 720.302, 720.306, 766.101, and 865.09, F.S.;
2030 conforming cross-references to changes made by the
2031 act; providing an effective date.

By Senator Clemens

27-00303B-14

2014654__

1 A bill to be entitled
 2 An act relating to business organizations; amending s.
 3 605.0112, F.S.; providing additional exceptions
 4 regarding the requirement that limited liability
 5 company names be distinguishable from the names of
 6 other entities or filings; specifying differences in
 7 names which are not considered distinguishable;
 8 designating part I of ch. 607, F.S., entitled
 9 "Corporations"; amending s. 607.0101, F.S.; revising a
 10 provision to conform to changes made by the act;
 11 amending s. 607.0401, F.S.; providing additional
 12 exceptions regarding the requirement that corporate
 13 names be distinguishable; specifying differences in
 14 corporate names which are not considered
 15 distinguishable; amending s. 607.1302, F.S.; providing
 16 that the amendment of articles of incorporation or the
 17 merger, conversion, or share exchange of a social
 18 purpose or benefit corporation entitles the
 19 shareholders to appraisal rights; creating part II of
 20 ch. 607, F.S., entitled "Social Purpose Corporations";
 21 creating s. 607.501, F.S.; providing application and
 22 effect; creating s. 607.502, F.S.; providing
 23 definitions; creating s. 607.503, F.S.; establishing
 24 requirements for the formation of a social purpose
 25 corporation; creating s. 607.504, F.S.; providing
 26 procedures for an existing corporation to become a
 27 social purpose corporation; creating s. 607.505, F.S.;
 28 providing procedures for the termination of a social
 29 purpose corporation status; creating s. 607.506, F.S.;

Page 1 of 70

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

27-00303B-14

2014654__

30 requiring that the corporate purpose must be to create
 31 a public benefit; providing criteria; creating s.
 32 607.507, F.S.; requiring that the directors of a
 33 social purpose corporation meet a standard of conduct;
 34 providing criteria for the standards; creating s.
 35 607.508, F.S.; authorizing the articles of
 36 incorporation of a social purpose corporation to
 37 provide for a benefit director; providing powers and
 38 duties of a benefit director; creating s. 607.509,
 39 F.S.; requiring that the officers of a social purpose
 40 corporation meet a standard of conduct; providing
 41 criteria for the standards of conduct; creating s.
 42 607.510, F.S.; authorizing a social purpose
 43 corporation to designate an officer as a benefit
 44 officer; providing for the powers and duties of a
 45 benefit officer; creating s. 607.511, F.S.;
 46 authorizing certain legal actions to be brought
 47 against a social purpose corporation, its officers, or
 48 its directors; creating s. 607.512, F.S.; requiring
 49 the board of directors to prepare an annual benefit
 50 report; providing criteria for the preparation of the
 51 report; creating s. 607.513, F.S.; establishing
 52 requirements for the availability and dissemination of
 53 the annual report; authorizing a court to order
 54 dissemination of the report; providing criteria;
 55 creating part III of ch. 607, F.S., entitled "Benefit
 56 Corporations"; creating s. 607.601, F.S.; providing
 57 for application and effect; creating s. 607.602, F.S.;
 58 providing definitions; creating s. 607.603, F.S.;

Page 2 of 70

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

27-00303B-14

2014654__

59 establishing requirements for the formation of a
 60 benefit corporation; creating s. 607.604, F.S.;
 61 providing procedures for an existing corporation to
 62 become a benefit corporation; creating s. 607.605,
 63 F.S.; providing procedures for the termination of a
 64 benefit corporation status; creating s. 607.606, F.S.;
 65 requiring that the corporate purpose be to create a
 66 public benefit; providing criteria; creating s.
 67 607.607, F.S.; requiring the directors of a benefit
 68 corporation to meet a standard of conduct; providing
 69 criteria for the standards; creating s. 607.608, F.S.;
 70 authorizing the articles of incorporation of a benefit
 71 corporation to provide for a benefit director;
 72 providing powers and duties of the benefit director;
 73 creating s. 607.609, F.S.; requiring the officers of a
 74 benefit corporation to meet a standard of conduct;
 75 providing criteria for the standards of conduct;
 76 creating s. 607.610, F.S.; authorizing a benefit
 77 corporation to designate an officer as a benefit
 78 officer; providing for the powers and duties of the
 79 benefit officer; creating s. 607.611, F.S.;
 80 authorizing certain legal actions to be brought
 81 against a benefit corporation, its officers, or its
 82 directors; creating s. 607.612, F.S.; requiring the
 83 board of directors to prepare an annual benefit
 84 report; providing criteria for the preparation of the
 85 report; creating s. 607.613, F.S.; establishing
 86 requirements for the availability and dissemination of
 87 the annual report; authorizing a court to order

Page 3 of 70

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

27-00303B-14

2014654__

88 dissemination of the report; amending ss. 617.0401 and
 89 620.1108, F.S; providing additional exceptions
 90 regarding the requirement that the names of entities
 91 be distinguishable; specifying differences in names
 92 which are not considered distinguishable; amending ss.
 93 48.091, 215.555, 243.54, 310.171, 310.181, 329.10,
 94 339.412, 420.101, 420.111, 420.161, 440.02, 440.386,
 95 609.08, 617.1908, 618.221, 619.04, 624.430, 624.462,
 96 624.489, 628.041, 631.262, 636.204, 641.2015,
 97 655.0201, 658.23, 658.2953, 658.30, 658.36, 663.03,
 98 663.04, 663.301, 663.306, 663.313, 718.111, 719.104,
 99 720.302, 720.306, 766.101, and 865.09, F.S.;
 100 conforming cross-references to changes made by the
 101 act; providing an effective date.

102
 103 Be It Enacted by the Legislature of the State of Florida:

104
 105 Section 1. Subsection (1) of section 605.0112, Florida
 106 Statutes, is amended to read:

107 605.0112 Name.—

108 (1) The name of a limited liability company:

109 (a) Must contain the words "limited liability company" or
 110 the abbreviation "L.L.C." or "LLC,"~~+~~

111 (b) Must be distinguishable in the records of the Division
 112 of Corporations of the department from the names of all other
 113 entities or filings that are on file with the division, except
 114 fictitious name registrations pursuant to s. 865.09, general
 115 partnership registrations pursuant to s. 620.8105, and limited
 116 liability partnership statements pursuant to s. 620.9001 which

Page 4 of 70

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

27-00303B-14

2014654__

117 are organized, registered, or reserved under the laws of this
 118 state, ~~which names are on file with the division~~; however, a
 119 limited liability company may register under a name that is not
 120 otherwise distinguishable on the records of the division with
 121 the written consent of the owner entity ~~if, provided~~ the consent
 122 is filed with the division at the time of registration of such
 123 name. A name that is different from the name of another entity
 124 or filing due to any of the following is not considered
 125 distinguishable:

126 1. A suffix.

127 2. A definite or indefinite article.

128 3. The word "and" and the symbol "&."

129 4. The singular, plural, or possessive form of a word.

130 5. A recognized abbreviation of a root word.

131 6. A punctuation mark or a symbol.

132 (c) May not contain language stating or implying that the
 133 limited liability company is organized for a purpose other than
 134 a purpose authorized in this chapter and its articles of
 135 organization. ~~and~~

136 (d) May not contain language stating or implying that the
 137 limited liability company is connected with a state or federal
 138 government agency or a corporation or other entity chartered
 139 under the laws of the United States.

140 Section 2. Sections 607.0101 through 607.193, Florida
 141 Statutes, are designated as part I of chapter 607, Florida
 142 Statutes, and entitled "CORPORATIONS."

143 Section 3. Section 607.0101, Florida Statutes, is amended
 144 to read:

145 607.0101 Short title.—This part ~~aet shall be known and~~ may

Page 5 of 70

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

27-00303B-14

2014654__

146 be cited as the "Florida Business Corporation Act."

147 Section 4. Section 607.0401, Florida Statutes, is amended
 148 to read:

149 607.0401 Corporate name.—A corporate name:

150 (1) Must contain the word "corporation," "company," or
 151 "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.," or
 152 the designation "Corp.," "Inc.," or "Co.," as will clearly indicate
 153 that it is a corporation instead of a natural person,
 154 partnership, or other business entity. ~~and~~

155 (2) May not contain language stating or implying that the
 156 corporation is organized for a purpose other than that permitted
 157 in this act and its articles of incorporation. ~~and~~

158 (3) May not contain language stating or implying that the
 159 corporation is connected with a state or federal government
 160 agency or a corporation chartered under the laws of the United
 161 States. ~~and~~

162 (4) Must be distinguishable from the names of all other
 163 entities or filings that are on file with the Division of
 164 Corporations, except fictitious name registrations pursuant to
 165 s. 865.09, general partnership registrations pursuant to s.
 166 620.8105, and limited liability partnership statements pursuant
 167 to s. 620.9001 which are organized, registered, or reserved
 168 under the laws of this state, ~~which names are on file with the~~
 169 ~~Division of Corporations~~. A name that is different from the name
 170 of another entity or filing due to any of the following is not
 171 considered distinguishable:

172 (a) A suffix.

173 (b) A definite or indefinite article.

174 (c) The word "and" and the symbol "&."

Page 6 of 70

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

27-00303B-14

2014654__

175 (d) The singular, plural, or possessive form of a word.

176 (e) A recognized abbreviation of a root word.

177 (f) A punctuation mark or a symbol.

178 (5) ~~The name of the corporation~~ As filed with the
 179 Department of State, ~~is shall be~~ for public notice only and does
 180 ~~shall~~ not alone create any presumption of ownership beyond that
 181 which is created under the common law.

182 Section 5. Subsection (1) of section 607.1302, Florida
 183 Statutes, is amended to read:

184 607.1302 Right of shareholders to appraisal.-

185 (1) A shareholder of a domestic corporation is entitled to
 186 appraisal rights, and to obtain payment of the fair value of
 187 that shareholder's shares, in the event of any of the following
 188 corporate actions:

189 (a) Consummation of a conversion of such corporation
 190 pursuant to s. 607.1112 if shareholder approval is required for
 191 the conversion and the shareholder is entitled to vote on the
 192 conversion under ss. 607.1103 and 607.1112(6), or the
 193 consummation of a merger to which such corporation is a party if
 194 shareholder approval is required for the merger under s.
 195 607.1103 and the shareholder is entitled to vote on the merger
 196 or if such corporation is a subsidiary and the merger is
 197 governed by s. 607.1104;

198 (b) Consummation of a share exchange to which the
 199 corporation is a party as the corporation whose shares will be
 200 acquired if the shareholder is entitled to vote on the exchange,
 201 except that appraisal rights are shall not ~~be~~ available to any
 202 shareholder of the corporation with respect to any class or
 203 series of shares of the corporation that is not exchanged;

Page 7 of 70

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

27-00303B-14

2014654__

204 (c) Consummation of a disposition of assets pursuant to s.
 205 607.1202 if the shareholder is entitled to vote on the
 206 disposition, including a sale in dissolution but not including a
 207 sale pursuant to court order or a sale for cash pursuant to a
 208 plan by which all or substantially all of the net proceeds of
 209 the sale will be distributed to the shareholders within 1 year
 210 after the date of sale;

211 (d) An amendment of the articles of incorporation with
 212 respect to the class or series of shares which reduces the
 213 number of shares of a class or series owned by the shareholder
 214 to a fraction of a share if the corporation has the obligation
 215 or right to repurchase the fractional share so created;

216 (e) Any other amendment to the articles of incorporation,
 217 merger, share exchange, or disposition of assets to the extent
 218 provided by the articles of incorporation, bylaws, or a
 219 resolution of the board of directors, except that no bylaw or
 220 board resolution providing for appraisal rights may be amended
 221 or otherwise altered except by shareholder approval; ~~or~~

222 (f) With regard to a class of shares prescribed in the
 223 articles of incorporation prior to October 1, 2003, including
 224 any shares within that class subsequently authorized by
 225 amendment, any amendment of the articles of incorporation if the
 226 shareholder is entitled to vote on the amendment and if such
 227 amendment would adversely affect such shareholder by:

228 1. Altering or abolishing any preemptive rights attached to
 229 any of his or her shares;

230 2. Altering or abolishing the voting rights pertaining to
 231 any of his or her shares, except as such rights may be affected
 232 by the voting rights of new shares then being authorized of any

Page 8 of 70

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

27-00303B-14

2014654__

233 existing or new class or series of shares;

234 3. Effecting an exchange, cancellation, or reclassification

235 of any of his or her shares, when such exchange, cancellation,

236 or reclassification would alter or abolish the shareholder's

237 voting rights or alter his or her percentage of equity in the

238 corporation, or effecting a reduction or cancellation of accrued

239 dividends or other arrearages in respect to such shares;

240 4. Reducing the stated redemption price of any of the

241 shareholder's redeemable shares, altering or abolishing any

242 provision relating to any sinking fund for the redemption or

243 purchase of any of his or her shares, or making any of his or

244 her shares subject to redemption when they are not otherwise

245 redeemable;

246 5. Making noncumulative, in whole or in part, dividends of

247 any of the shareholder's preferred shares which had theretofore

248 been cumulative;

249 6. Reducing the stated dividend preference of any of the

250 shareholder's preferred shares; or

251 7. Reducing any stated preferential amount payable on any

252 of the shareholder's preferred shares upon voluntary or

253 involuntary liquidation;-

254 (g) An amendment of the articles of incorporation of a

255 social purpose corporation to which s. 607.504 or s. 607.505

256 applies;

257 (h) An amendment of the articles of incorporation of a

258 benefit corporation to which s. 607.604 or s. 607.605 applies;

259 (i) A merger, conversion, or share exchange of a social

260 purpose corporation to which s. 607.504 applies; or

261 (j) A merger, conversion, or share exchange of a benefit

Page 9 of 70

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

27-00303B-14

2014654__

262 corporation to which s. 607.604 applies.

263 Section 6. Sections 607.501 through 607.513, Florida

264 Statutes, are designated as part II of chapter 607, Florida

265 Statutes, and entitled "SOCIAL PURPOSE CORPORATIONS."

266 Section 7. Section 607.501, Florida Statutes, is created to

267 read:

268 607.501 Application and effect of part.-

269 (1) This part applies to a social purpose corporation and

270 does not affect a corporation that is not a social purpose

271 corporation.

272 (2) Except as otherwise provided in this part, this chapter

273 applies generally to all social purpose corporations.

274 (3) A social purpose corporation may be simultaneously

275 subject to this part and to one or more chapters, including

276 chapter 621. In such event, this part takes precedence with

277 respect to a social purpose corporation.

278 (4) Except as authorized by this part, a provision of the

279 articles of incorporation or bylaws of a social purpose

280 corporation, or a shareholders agreement among shareholders of a

281 social purpose corporation, may not limit, be inconsistent with,

282 or supersede a provision of this part.

283 Section 8. Section 607.502, Florida Statutes, is created to

284 read:

285 607.502 Definitions.-As used in this part, unless the

286 context otherwise requires, the term:

287 (1) "Benefit director" means:

288 (a) The director designated as the benefit director of a

289 social purpose corporation under s. 607.508; or

290 (b) A person with one or more of the powers, duties, or

Page 10 of 70

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

27-00303B-14

2014654__

291 rights of a benefit director to the extent provided in the
 292 articles of incorporation or bylaws under s. 607.508.

293 (2) "Benefit enforcement proceeding" means a claim or
 294 action for:

295 (a) The failure of a social purpose corporation to pursue
 296 or create a public benefit or a specific public benefit
 297 established in its articles of incorporation; or

298 (b) A violation of any obligation, duty, or standard of
 299 conduct under this part.

300 (3) "Benefit officer" means the individual designated as
 301 the benefit officer of a social purpose corporation under s.
 302 607.510.

303 (4) "Independent" means not having a material relationship
 304 with the social purpose corporation or a subsidiary of the
 305 social purpose corporation. A person does not have a material
 306 relationship solely by virtue of serving as the benefit director
 307 or benefit officer of the social purpose corporation or a
 308 subsidiary of the social purpose corporation. In determining
 309 whether a director or officer is independent, a material
 310 relationship between an individual and a social purpose
 311 corporation or any of its subsidiaries will be conclusively
 312 presumed to exist, at the time independence is to be determined,
 313 if any of the following apply:

314 (a) The individual is or was within the prior 3 years an
 315 employee, other than a benefit officer, of the social purpose
 316 corporation or a subsidiary.

317 (b) An immediate family member of the individual is or was
 318 within the prior 3 years an executive officer, other than a
 319 benefit officer, of the social purpose corporation or a

27-00303B-14

2014654__

320 subsidiary.

321 (c) When ownership is calculated as if all outstanding
 322 rights to acquire equity interests in the social purpose
 323 corporation had been exercised, there is beneficial or record
 324 ownership of 5 percent or more of the outstanding shares of the
 325 social purpose corporation by:

326 1. The individual; or

327 2. An entity:

328 a. Of which the individual is a director, an officer, or a
 329 manager; or

330 b. In which, when ownership is calculated as if all
 331 outstanding rights to acquire equity interests in the entity had
 332 been exercised, the individual owns beneficially or of record 5
 333 percent or more of the outstanding equity interests.

334 (5) "Minimum status vote" means:

335 (a) In the case of a corporation that is to become a social
 336 purpose corporation, whether by amendment of the articles of
 337 incorporation or by way of or pursuant to a merger, conversion,
 338 or share exchange; a social purpose corporation whose articles
 339 of incorporation are to be amended pursuant to s. 607.506(2); or
 340 a social purpose corporation that is to cease being a social
 341 purpose corporation, in addition to any other required approval
 342 or vote, the satisfaction of the following conditions:

343 1. The holders of each class or series of shares shall be
 344 entitled to vote as a separate voting group on the corporate
 345 action regardless of any limitation on the voting rights of any
 346 class or series stated in the articles of incorporation or
 347 bylaws.

348 2. The corporate action is approved by vote of each class

27-00303B-14

2014654__

349 or series of shares entitled to vote by at least two-thirds of
 350 the total votes of the class or series.

351 (b) In the case of a domestic entity, other than a
 352 corporation, which is to be simultaneously converted to a social
 353 purpose corporation or merged into a social purpose corporation,
 354 in addition to any other required approval, vote, or consent,
 355 the satisfaction of the following conditions:

356 1. The holders of each class or series of equity interest
 357 in the entity who are entitled to receive a distribution of any
 358 kind are entitled, as a separate voting group, to vote on or
 359 consent to the action regardless of any applicable limitation on
 360 the voting or consent rights of any class or series.

361 2. The action is approved by vote or consent of each class
 362 or series of equity interest described in subparagraph 1. who
 363 are entitled to vote by at least two-thirds of the votes or
 364 consent of the class or series.

365 (6) "Public benefit" means a positive effect, or the
 366 minimization of negative effects taken as a whole, on the
 367 environment or on one or more categories of persons or entities
 368 other than shareholders in their capacity as shareholders, of an
 369 artistic, charitable, economic, educational, cultural, literary,
 370 religious, social, ecological, or scientific nature, from the
 371 business and operations of a social purpose corporation. The
 372 term includes, but is not limited to, the following:

373 (a) Providing low-income or underserved individuals or
 374 communities with beneficial products or services.

375 (b) Promoting economic opportunity for individuals or
 376 communities beyond the creation of jobs in the normal course of
 377 business.

27-00303B-14

2014654__

378 (c) Protecting or restoring the environment.

379 (d) Improving human health.

380 (e) Promoting the arts, sciences, or advancement of
 381 knowledge.

382 (f) Increasing the flow of capital to entities that have as
 383 their stated purpose the provision of a benefit to society or
 384 the environment.

385 (7) "Social purpose corporation" means a corporation that
 386 is formed, or has elected to become, subject to this part, the
 387 status of which as a social purpose corporation has not been
 388 terminated.

389 (8) "Specific public benefit" means a benefit identified as
 390 a purpose of the social purpose corporation which is set forth
 391 in the articles of incorporation and is consistent with a public
 392 benefit.

393 (9) "Subsidiary" means, in relation to a person other than
 394 an individual, an entity in which the person owns beneficially
 395 or of record 50 percent or more of the outstanding equity
 396 interests.

397 (10) "Third-party standard" means a recognized standard for
 398 defining, reporting, and assessing the societal and
 399 environmental performance of a business which is:

400 (a) Comprehensive, because it assesses the effect of the
 401 business and its operations upon the interests listed in s.
 402 607.507(1) (a).

403 (b) Developed by an entity that is not controlled by the
 404 social purpose corporation.

405 (c) Credible, because it is developed by an entity that has
 406 access to necessary expertise to assess the overall effect of

27-00303B-14

2014654__

407 the business and uses a balanced, collaborative approach to
 408 develop the standard, including a period for public comment.

409 (d) Transparent, because the following information is
 410 publicly available:

411 1. The criteria considered under the standard when
 412 measuring the overall effect of the business and its operations
 413 upon the interests provided in s. 607.507(1)(a) and the relative
 414 weights, if any, of those criteria; and

415 2. The process used in the development and revision of the
 416 third-party standard regarding the identity of the directors,
 417 officers, material owners, and governing body of the entity that
 418 developed and controls revisions to the standard; the process by
 419 which revisions to the standard and changes to the membership of
 420 the governing body are made; and an accounting of the revenue
 421 and sources of financial support for the entity with sufficient
 422 detail to disclose any relationships that could reasonably be
 423 considered to present a potential conflict of interest.

424 Section 9. Section 607.503, Florida Statutes, is created to
 425 read:

426 607.503 Incorporation.—To incorporate as a social purpose
 427 corporation, an incorporator must satisfy the requirements of
 428 this chapter, and the articles of incorporation must state that
 429 the corporation is a social purpose corporation under this part.

430 Section 10. Section 607.504, Florida Statutes, is created
 431 to read:

432 607.504 Election of social purpose corporation status.—

433 (1) An existing corporation may become a social purpose
 434 corporation under this part by amending its articles of
 435 incorporation to include a statement that the corporation is a

27-00303B-14

2014654__

436 social purpose corporation under this part. The amendment must
 437 be adopted by the minimum status vote.

438 (2) A plan of merger, conversion, or share exchange must be
 439 adopted by the minimum status vote if an entity that is not a
 440 social purpose corporation is a party to the merger or
 441 conversion or if the exchanging entity in a share exchange and
 442 the surviving, new, or resulting entity is, or will be, a social
 443 purpose corporation.

444 (3) If an entity elects to become a social purpose
 445 corporation by amendment of the articles of incorporation or by
 446 a merger, conversion, or share exchange, the shareholders of the
 447 entity are entitled to appraisal rights under and pursuant to
 448 ss. 607.1301-607.1333.

449 Section 11. Section 607.505, Florida Statutes, is created
 450 to read:

451 607.505 Termination of social purpose corporation status.—

452 (1) A social purpose corporation may terminate its status
 453 as such and cease to be subject to this part by amending its
 454 articles of incorporation to delete the provision required under
 455 s. 607.503 or s. 607.504. The amendment must be adopted by the
 456 minimum status vote.

457 (2) A plan of merger, conversion, or share exchange which
 458 has the effect of terminating the status of a corporation as a
 459 social purpose corporation must be adopted by the minimum status
 460 vote. A sale, lease, exchange, or other disposition of the
 461 assets of all or substantially all of the assets of a social
 462 purpose corporation is not effective unless the transaction is
 463 approved by the minimum status vote. However, a minimum status
 464 vote is not required if the transaction is in the usual and

27-00303B-14

2014654__

465 regular course of business, is pursuant to court order, or is a
 466 sale pursuant to which all or a substantial portion of the net
 467 proceeds of the sale will be distributed to the shareholders
 468 within 1 year after the date of the sale.

469 (3) If a corporation's status as a social purpose
 470 corporation is terminated pursuant to subsection (1) or
 471 subsection (2), shareholders of the corporation are entitled to
 472 appraisal rights under and pursuant to ss. 607.1301-607.1333.

473 Section 12. Section 607.506, Florida Statutes, is created
 474 to read:

475 607.506 Corporate purpose.-

476 (1) A social purpose corporation has the purpose of
 477 creating a public benefit. This purpose is in addition to its
 478 purpose under s. 607.0301.

479 (2) The articles of incorporation of a social purpose
 480 corporation may identify one or more specific public benefits as
 481 its purpose in addition to its purposes under s. 607.0301 and
 482 subsection (1). A social purpose corporation may amend its
 483 articles of incorporation to add, amend, or delete the
 484 identification of a specific public benefit purpose; however,
 485 the amendment must be adopted by the minimum status vote.

486 (3) The creation of a public benefit and a specific public
 487 benefit under subsections (1) and (2) is deemed to be in the
 488 best interest of the social purpose corporation.

489 (4) A professional corporation that is a social purpose
 490 corporation does not violate s. 621.08 by having as its purpose
 491 the creation of a public benefit or a specific public benefit.

492 Section 13. Section 607.507, Florida Statutes, is created
 493 to read:

Page 17 of 70

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

27-00303B-14

2014654__

494 607.507 Standard of conduct for directors.-

495 (1) In discharging their duties and in considering the best
 496 interests of the social purpose corporation, the directors:

497 (a) Shall consider the effects of any action or inaction
 498 upon:

499 1. The shareholders of the social purpose corporation; and

500 2. The ability of the social purpose corporation to
 501 accomplish its public benefit or any specific public benefit
 502 purpose;

503 (b) May consider the effects of any action or inaction upon
 504 any of the following:

505 1. The employees and work force of the social purpose
 506 corporation, its subsidiaries, and its suppliers;

507 2. The interests of customers and suppliers as
 508 beneficiaries of the general public benefit or specific public
 509 benefits of the social purpose corporation;

510 3. Community and societal factors, including those of each
 511 community in which offices or facilities of the social purpose
 512 corporation, its subsidiaries, or its suppliers are located;

513 4. The local and global environment; and

514 5. The short-term and long-term interests of the social
 515 purpose corporation, including benefits that may accrue to the
 516 social purpose corporation from its long-term plans and the
 517 possibility that these interests may be best served by the
 518 continued independence of the social purpose corporation; and

519 (c) May consider other pertinent factors or the interests
 520 of any other group that they deem appropriate;

521 (d) Are not required to give priority to the interests of a
 522 particular person or group referred to in paragraph (a),

Page 18 of 70

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

27-00303B-14

2014654__

523 paragraph (b), or paragraph (c) unless the social purpose
 524 corporation states in its articles of incorporation its
 525 intention to give such priority; and

526 (e) Are not required to give equal weight to the interests
 527 of any particular person or group referred to in paragraph (a),
 528 paragraph (b), or paragraph (c) unless the social purpose
 529 corporation has stated in its articles of incorporation its
 530 intention to give such equal weight.

531 (2) Except as provided in the articles of incorporation, a
 532 director is not personally liable for monetary damages to the
 533 corporation, or to any other person, for the failure of the
 534 social purpose corporation to pursue or create a public benefit
 535 or a specific public benefit. A director is subject to the
 536 duties specified in s. 607.0830.

537 (3) Except as provided in the articles of incorporation, a
 538 director does not have a duty to a person who is a beneficiary
 539 of the public benefit purpose or any one or more specific public
 540 benefit purposes of a social purpose corporation.

541 Section 14. Section 607.508, Florida Statutes, is created
 542 to read:

543 607.508 Benefit director.—

544 (1) If the articles of incorporation so provide, the board
 545 of directors of a social purpose corporation may include a
 546 director who is designated as the benefit director and, in
 547 addition to the powers, duties, rights, and immunities of the
 548 other directors of the social purpose corporation, has the
 549 powers, duties, rights, and immunities provided in this part.

550 (2) The benefit director shall be elected, and may be
 551 removed, in the manner provided by this chapter. Except as

27-00303B-14

2014654__

552 provided under subsection (5), the benefit director shall be
 553 independent and may serve as a benefit officer. The articles of
 554 incorporation or bylaws may prescribe additional qualifications
 555 of the benefit director.

556 (3) Unless the articles of incorporation or bylaws provide
 557 otherwise, the benefit director shall prepare, and the social
 558 purpose corporation shall include in the annual benefit report
 559 to shareholders required under s. 607.512, the opinion of the
 560 benefit director on the following:

561 (a) Whether the social purpose corporation in all material
 562 respects acted in accordance with its public benefit purpose and
 563 any specific public benefit purpose during the period covered by
 564 the report.

565 (b) Whether the directors and officers complied with ss.
 566 607.507(1) and 607.509(1).

567 (c) Whether the social purpose corporation or its directors
 568 or officers failed to comply with paragraph (a) or s. 607.507(1)
 569 or s. 607.509(1), including a description of the ways in which
 570 the social purpose corporation or its directors or officers
 571 failed to comply.

572 (4) The action or inaction of an individual in his or her
 573 capacity as a benefit director shall constitute for all purposes
 574 an action or inaction of that individual in his or her capacity
 575 as a director of the social purpose corporation.

576 (5) The benefit director of a corporation formed under
 577 chapter 621 is not required to be independent.

578 Section 15. Section 607.509, Florida Statutes, is created
 579 to read:

580 607.509 Standard of conduct for officers.—

27-00303B-14

2014654__

581 (1) If an officer of a social purpose corporation
 582 reasonably believes that a matter may have a material effect on
 583 the ability of the corporation to create a public benefit or a
 584 specific public benefit identified in the articles of
 585 incorporation and the officer has discretion to act on the
 586 matter, the officer shall consider the interests and factors
 587 provided in s. 607.507(1).

588 (2) The officer's consideration of interests and factors
 589 under subsection (1) does not constitute a violation of s.
 590 607.0841.

591 (3) Except as provided in the articles of incorporation, an
 592 officer is not personally liable for monetary damages to the
 593 corporation or any other person for the failure of the social
 594 purpose corporation to pursue or create a public benefit or a
 595 specific public benefit; however, he or she is subject to s.
 596 607.0841.

597 (4) Except as provided in the articles of incorporation, an
 598 officer does not have any duty to a person who is a beneficiary
 599 of the public benefit purpose or any specific public benefit
 600 purpose of a social purpose corporation arising from the status
 601 of the person as a beneficiary.

602 Section 16. Section 607.510, Florida Statutes, is created
 603 to read:
 604 607.510 Benefit officer.-
 605 (1) A social purpose corporation may designate an officer
 606 as the benefit officer.
 607 (2) The benefit officer has the powers and duties set forth
 608 in the bylaws or determined by the board of directors, which may
 609 include, but are not limited to:

Page 21 of 70

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

27-00303B-14

2014654__

610 (a) Powers and duties relating to the public benefit or a
 611 specific public benefit purpose of the corporation; and
 612 (b) The duty to prepare the annual benefit report required
 613 under s. 607.512.

614 Section 17. Section 607.511, Florida Statutes, is created
 615 to read:
 616 607.511 Right of action.-
 617 (1)(a) Except in a benefit enforcement proceeding, a person
 618 may not bring an action or assert a claim against a social
 619 purpose corporation or its directors or officers with respect
 620 to:

621 1. A failure to pursue or create a public benefit or a
 622 specific public benefit set forth in its articles of
 623 incorporation; or
 624 2. A violation of an obligation, duty, or standard of
 625 conduct under this part.

626 (b) A social purpose corporation is not liable for monetary
 627 damages under this part for the failure of the social purpose
 628 corporation to pursue or create a public benefit or a specific
 629 public benefit.

630 (2) A benefit enforcement proceeding may be commenced or
 631 maintained only:

632 (a) Directly by the social purpose corporation; or
 633 (b) Derivatively by:

634 1. A shareholder of record on the date of the action or
 635 inaction complained of in the benefit enforcement proceeding;
 636 2. A director;
 637 3. A person or group of persons that owns beneficially or
 638 of record 5 percent or more of the outstanding equity interests

Page 22 of 70

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

27-00303B-14

2014654__

639 in an entity of which the social purpose corporation is a
 640 subsidiary on the date of the action or inaction complained of
 641 in the benefit enforcement proceeding; or

642 4. Any other person who is specified in the articles of
 643 incorporation or bylaws of the social purpose corporation.

644 Section 18. Section 607.512, Florida Statutes, is created
 645 to read:

646 607.512 Preparation of annual benefit report.—

647 (1) Unless it is prepared by a benefit director or benefit
 648 officer, the board of directors shall prepare an annual benefit
 649 report that includes all of the following:

650 (a) A narrative description of:

651 1. The ways in which the social purpose corporation pursued
 652 a public benefit during the year and the extent to which a
 653 public benefit was created.

654 2. Any circumstance that has hindered the pursuit or
 655 creation of a public benefit by the social purpose corporation.

656 3. The process and rationale for selecting or changing the
 657 third-party standard used to prepare the benefit report, if the
 658 articles of incorporation of the social purpose corporation
 659 require, or the board of directors determines, that the annual
 660 benefit report must be prepared in accordance with a third-party
 661 standard.

662 (b) If the articles of incorporation of the social purpose
 663 corporation require, or the board of directors determines, that
 664 the annual benefit report must be prepared in accordance with a
 665 third-party standard, an assessment of the overall societal and
 666 environmental performance of the social purpose corporation
 667 using a third-party standard that is:

Page 23 of 70

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

27-00303B-14

2014654__

668 1. Applied consistently with any previous application in
 669 prior annual benefit reports; or

670 2. Accompanied by an explanation of the reasons for
 671 inconsistent application or any change in the standard from the
 672 immediate prior report.

673 (c) The name of the benefit director and the benefit
 674 officer, if those positions exist, and the respective addresses
 675 to which correspondence may be directed.

676 (d) If the corporation has a benefit director, his or her
 677 statement as provided in s. 607.508(3).

678 (e) If the articles of incorporation of the social purpose
 679 corporation require, or the board of directors determines, that
 680 the annual benefit report must be prepared in accordance with a
 681 third-party standard, a statement of any connection between the
 682 organization that established the third-party standard, or its
 683 directors, officers, or any holder of 5 percent or more of the
 684 governance interests in the organization, and the social purpose
 685 corporation or its directors, officers, or any holder of 5
 686 percent or more of the outstanding shares of the social purpose
 687 corporation, including any financial or governance relationship
 688 that might materially affect the credibility of the use of the
 689 third-party standard.

690 (2) If, during the year covered by an annual benefit
 691 report, a benefit director resigned from, or refused to stand
 692 for reelection to, his or her position, or was removed from his
 693 or her position, and he or she furnished written correspondence
 694 to the social purpose corporation concerning the circumstances
 695 surrounding his or her departure, that correspondence must be
 696 included as an exhibit in the annual benefit report.

Page 24 of 70

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

27-00303B-14

2014654

697 (3) The annual benefit report and the assessment of the
 698 performance of the social purpose corporation in the annual
 699 benefit report required under paragraph (1)(b) are not required
 700 to be audited or certified by a third-party standards provider.

701 Section 19. Section 607.513, Florida Statutes, is created
 702 to read:

703 607.513 Availability of annual benefit report.-

704 (1) Each social purpose corporation shall send its annual
 705 benefit report to each shareholder:

706 (a) Within 120 days after the end of the fiscal year of the
 707 social purpose corporation; or

708 (b) At the same time that the social purpose corporation
 709 delivers any other annual report to its shareholders.

710 (2) A social purpose corporation shall post each annual
 711 benefit report on the public portion of its website, if any, and
 712 it shall remain posted for at least 3 years.

713 (3) If a social purpose corporation does not have a
 714 website, the corporation shall provide a copy of its most recent
 715 annual benefit report, without charge, to any person who
 716 requests a copy.

717 (4) If a social purpose corporation does not comply with
 718 the annual benefit report delivery requirement, the circuit
 719 court in the county in which the principal office of the social
 720 purpose corporation is located or, if no office is located in
 721 this state, the county in which its registered office is
 722 located, may, after a shareholder of the social purpose
 723 corporation requests a copy, summarily order the corporation to
 724 furnish the annual benefit report. If the court orders the
 725 annual benefit report to be furnished, the court may also order

Page 25 of 70

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

27-00303B-14

2014654

726 the social purpose corporation to pay the shareholder's costs,
 727 including reasonable attorney fees, which were incurred in
 728 obtaining the order and otherwise enforce his or her rights
 729 under this section.

730 Section 20. Sections 607.601 through 607.613, Florida
 731 Statutes, are designated as part III of chapter 607, Florida
 732 Statutes, entitled "BENEFIT CORPORATIONS."

733 Section 21. Section 607.601, Florida Statutes, is created
 734 to read:

735 607.601 Application and effect of part.-

736 (1) This part applies to a benefit corporation and does not
 737 affect a corporation that is not a benefit corporation.

738 (2) Except as provided in this part, this chapter applies
 739 generally to all benefit corporations.

740 (3) A benefit corporation may be simultaneously subject to
 741 this part and to one or more chapters, including chapter 621. In
 742 such event, this part takes precedence with respect to a benefit
 743 corporation.

744 (4) Except as authorized by this part, a provision of the
 745 articles of incorporation or bylaws of a benefit corporation, or
 746 a shareholders agreement among shareholders of a benefit
 747 corporation, may not limit, be inconsistent with, or supersede a
 748 provision of this part.

749 Section 22. Section 607.602, Florida Statutes, is created
 750 to read:

751 607.602 Definitions.-As used in this part, unless the
 752 context otherwise requires, the term:

753 (1) "Benefit corporation" means a corporation that is
 754 formed, or has elected to become, subject to this part, the

Page 26 of 70

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

27-00303B-14

2014654__

755 status of which as a benefit corporation has not been
 756 terminated.

757 (2) "Benefit director" means:

758 (a) The director designated as the benefit director of a
 759 benefit corporation under s. 607.608; or

760 (b) A person with one or more of the powers, duties, or
 761 rights of a benefit director to the extent provided in the
 762 articles of incorporation or bylaws under s. 607.608.

763 (3) "Benefit enforcement proceeding" means any claim or
 764 action for:

765 (a) The failure of a benefit corporation to pursue or
 766 create a general public benefit or a specific public benefit
 767 purpose set forth in its articles of incorporation; or

768 (b) A violation of any obligation, duty, or standard of
 769 conduct under this part.

770 (4) "Benefit officer" means the individual designated as
 771 the benefit officer of a benefit corporation under s. 607.610.

772 (5) "General public benefit" means a material, positive
 773 effect on society and the environment, taken as a whole, as
 774 assessed using a third-party standard which is attributable to
 775 the business and operations of a benefit corporation.

776 (6) "Independent" means not having a material relationship
 777 with the benefit corporation or a subsidiary of the benefit
 778 corporation. A person does not have a material relationship
 779 solely by virtue of serving as the benefit director or benefit
 780 officer of the benefit corporation or a subsidiary of the
 781 benefit corporation. In determining whether a director or
 782 officer is independent, a material relationship between an
 783 individual and a benefit corporation or any of its subsidiaries

Page 27 of 70

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

27-00303B-14

2014654__

784 will be conclusively presumed to exist, at the time independence
 785 is to be determined, if any of the following apply:

786 (a) The individual is or has been within the prior 3 years
 787 an employee, other than a benefit officer, of the benefit
 788 corporation or a subsidiary.

789 (b) An immediate family member of the individual is or has
 790 been within the prior 3 years an executive officer, other than a
 791 benefit officer, of the benefit corporation or a subsidiary.

792 (c) When ownership is calculated as if all outstanding
 793 rights to acquire equity interests in the benefit corporation
 794 had been exercised, there is beneficial or record ownership of 5
 795 percent or more of the outstanding shares of the benefit
 796 corporation by:

797 1. The individual; or

798 2. An entity:

799 a. Of which the individual is a director, an officer, or a
 800 manager; or

801 b. In which, when ownership is calculated as if all
 802 outstanding rights to acquire equity interests in the entity had
 803 been exercised, the individual owns beneficially or of record 5
 804 percent or more of the outstanding equity interests.

805 (7) "Minimum status vote" means:

806 (a) In the case of a corporation that is to become a
 807 benefit corporation, whether by amendment of the articles of
 808 incorporation or by way of or pursuant to a merger, conversion,
 809 or share exchange; a benefit corporation whose articles of
 810 incorporation are to be amended pursuant to s. 607.606(2); or a
 811 benefit corporation that is to cease being a benefit
 812 corporation, in addition to any other required approval or vote,

Page 28 of 70

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

27-00303B-14

2014654__

813 the satisfaction of the following conditions:

814 1. The holders of each class or series of shares shall be

815 entitled to vote as a separate voting group on the corporate

816 action regardless of any limitation on the voting rights of any

817 class or series stated in the articles of incorporation or

818 bylaws.

819 2. The corporate action is approved by vote of each class

820 or series of shares entitled to vote by at least two-thirds of

821 the total votes of the class or series.

822 (b) In the case of a domestic entity, other than a

823 corporation, which is to be simultaneously converted to a

824 benefit corporation or merged into a benefit corporation, in

825 addition to any other required approval, vote, or consent, the

826 satisfaction of the following conditions:

827 1. The holders of each class or series of equity interest

828 in the entity who are entitled to receive a distribution of any

829 kind are entitled, as a separate voting group, to vote on or

830 consent to the action regardless of any applicable limitation on

831 the voting or consent rights of any class or series.

832 2. The action is approved by vote or consent of each class

833 or series of equity interest described in subparagraph 1. who

834 are entitled to vote by at least two-thirds of the votes or

835 consent of the class or series.

836 (8) "Specific public benefit" includes, but is not limited

837 to:

838 (a) Providing low-income or underserved individuals or

839 communities with beneficial products or services;

840 (b) Promoting economic opportunity for individuals or

841 communities beyond the creation of jobs in the normal course of

Page 29 of 70

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

27-00303B-14

2014654__

842 business;

843 (c) Protecting or restoring the environment;

844 (d) Improving human health;

845 (e) Promoting the arts, sciences, or advancement of

846 knowledge;

847 (f) Increasing the flow of capital to entities that have as

848 their stated purpose the provision of a benefit to society or

849 the environment; and

850 (g) Any other public benefit consistent with the purposes

851 of the benefit corporation.

852 (9) "Subsidiary" means, in relation to a person other than

853 an individual, an entity in which a person owns beneficially or

854 of record 50 percent or more of the outstanding equity

855 interests.

856 (10) "Third-party standard" means a recognized standard for

857 defining, reporting, and assessing the societal and

858 environmental performance of a business which is:

859 (a) Comprehensive, because it assesses the effect of the

860 business and its operations upon the interests provided in s.

861 607.607(1)(a)2.-5.

862 (b) Developed by an entity that is not controlled by the

863 benefit corporation.

864 (c) Credible, because it is developed by an entity that has

865 access to necessary expertise to assess the overall societal and

866 environmental performance of a business and uses a balanced,

867 collaborative approach to develop the standard, including a

868 period for public comment.

869 (d) Transparent, because the following information is

870 publicly available:

Page 30 of 70

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

27-00303B-14

2014654__

871 1. The criteria considered under the standard when
 872 measuring the overall societal and environmental performance of
 873 a business and the relative weights, if any, of those criteria.
 874 2. The identity of the directors, officers, material
 875 owners, and the governing body of the entity that developed and
 876 controlled revisions; the process by which revisions to the
 877 standard and changes to the membership of the governing body are
 878 made; and an accounting of the revenue and sources of financial
 879 support for the entity, with sufficient detail to disclose any
 880 relationships that could reasonably be considered to present a
 881 potential conflict of interest.

882 Section 23. Section 607.603, Florida Statutes, is created
 883 to read:

884 607.603 Incorporation.—To incorporate as a benefit
 885 corporation, an incorporator must satisfy the requirements of
 886 this chapter, and the articles of incorporation must state that
 887 the corporation is a benefit corporation under this part.

888 Section 24. Section 607.604, Florida Statutes, is created
 889 to read:

890 607.604 Election of benefit corporation status.—
 891 (1) An existing corporation may become a benefit
 892 corporation under this part by amending its articles of
 893 incorporation to include a statement that the corporation is a
 894 benefit corporation under this part. The amendment must be
 895 adopted by the minimum status vote.
 896 (2) A plan of merger, conversion, or share exchange must be
 897 adopted by the minimum status vote if an entity that is not a
 898 benefit corporation is a party to a merger or conversion or if
 899 the exchanging entity in a share exchange and the surviving,

Page 31 of 70

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

27-00303B-14

2014654__

900 new, or resulting entity is, or will be, a benefit corporation.
 901 (3) If an entity elects to become a benefit corporation by
 902 amendment of the articles of incorporation or by a merger,
 903 conversion, or share exchange, the shareholders of the entity
 904 are entitled to appraisal rights under and pursuant to ss.
 905 607.1301-607.1333.

906 Section 25. Section 607.605, Florida Statutes, is created
 907 to read:

908 607.605 Termination of benefit corporation status.—
 909 (1) A benefit corporation may terminate its status as such
 910 and cease to be subject to this part by amending its articles of
 911 incorporation to delete the provision required under s. 607.603
 912 or s. 607.604. The amendment must be adopted by the minimum
 913 status vote.

914 (2) A plan of merger, conversion, or share exchange which
 915 has the effect of terminating the status of a corporation as a
 916 benefit corporation must be adopted by the minimum status vote.
 917 A sale, lease, exchange, or other disposition of the assets of
 918 all or substantially all of a benefit corporation is not
 919 effective unless the transaction is approved by the minimum
 920 status vote. However, a minimum status vote is not required if
 921 the transaction is in the usual and regular course of business,
 922 is pursuant to court order, or is a sale pursuant to which all
 923 or a substantial portion of the net proceeds of the sale will be
 924 distributed to the shareholders within 1 year after the date of
 925 the sale.

926 (3) If a corporation's status as a benefit corporation is
 927 terminated pursuant to subsection (1) or subsection (2),
 928 shareholders of the corporation are entitled to appraisal rights

Page 32 of 70

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

27-00303B-14

2014654__

929 under and pursuant to ss. 607.1301-607.1333.

930 Section 26. Section 607.606, Florida Statutes, is created
931 to read:

932 607.606 Corporate purpose.—

933 (1) A benefit corporation has the purpose of creating a
934 general public benefit. This purpose is in addition to its
935 purpose under s. 607.0301.

936 (2) The articles of incorporation of a benefit corporation
937 may identify one or more specific public benefits as its purpose
938 in addition to its purposes under s. 607.0301 and subsection

939 (1). A benefit corporation may amend its articles of
940 incorporation to add, amend, or delete the identification of a
941 specific public benefit purpose; however, the amendment must be
942 adopted by the minimum status vote. The identification of a
943 specific public benefit under this subsection does not limit the
944 obligation of a benefit corporation under subsection (1).

945 (3) The creation of a general public benefit and a specific
946 public benefit under subsections (1) and (2) is deemed to be in
947 the best interest of the benefit corporation.

948 (4) A professional corporation that is a benefit
949 corporation does not violate s. 621.08 by having as its purpose
950 the creation of a general public benefit or a specific public
951 benefit.

952 Section 27. Section 607.607, Florida Statutes, is created
953 to read:

954 607.607 Standard of conduct for directors.—

955 (1) In discharging their duties and in considering the best
956 interests of the benefit corporation, the directors:

957 (a) Shall consider the effects of any action or inaction

27-00303B-14

2014654__

958 upon:

959 1. The shareholders of the benefit corporation;

960 2. The employees and work force of the benefit corporation,
961 its subsidiaries, and its suppliers;

962 3. The interests of customers and suppliers as
963 beneficiaries of the general public benefit and any specific
964 public benefit purposes of the benefit corporation;

965 4. Community and societal factors, including those of each
966 community in which offices or facilities of the benefit
967 corporation, its subsidiaries, or its suppliers are located;

968 5. The local and global environment;

969 6. The short-term and long-term interests of the benefit
970 corporation, including benefits that may accrue to the benefit
971 corporation from its long-term plans and the possibility that
972 these interests may be best served by the continued independence
973 of the benefit corporation; and

974 7. The ability of the benefit corporation to accomplish its
975 general public benefit purpose and each of its specific public
976 benefit purposes, if any;

977 (b) May consider other pertinent factors or the interests
978 of any other group that they deem appropriate;

979 (c) Are not required to give priority to the interests of a
980 particular person or group referred to in paragraph (a) or
981 paragraph (b) over the interests of any other person or group,
982 unless the benefit corporation has stated in its articles of
983 incorporation its intention to give priority to certain
984 interests; and

985 (d) Are not required to give equal weight to the interests
986 of a particular person or group referred to in paragraph (a) or

27-00303B-14

2014654

987 paragraph (b) unless the benefit corporation has stated in its
 988 articles of incorporation its intention to give such equal
 989 weight.

990 (2) Except as provided in the articles of incorporation, a
 991 director is not personally liable for monetary damages to the
 992 corporation, or to any other person, for the failure of the
 993 benefit corporation to pursue or create a public benefit or a
 994 specific public benefit. A director is subject to the duties
 995 established in s. 607.0830.

996 (3) Except as provided in the articles of incorporation, a
 997 director does not have a duty to a person who is a beneficiary
 998 of the general public benefit purpose or any one or more
 999 specific public benefit purposes of the benefit corporation.

1000 Section 28. Section 607.608, Florida Statutes, is created
 1001 to read:

1002 607.608 Benefit director.—

1003 (1) If the articles of incorporation so provide, the board
 1004 of directors of a benefit corporation may include a director who
 1005 is designated as the benefit director and, in addition to the
 1006 powers, duties, rights, and immunities of the other directors of
 1007 the benefit corporation, has the powers, duties, rights, and
 1008 immunities provided in this part.

1009 (2) The benefit director shall be elected, and may be
 1010 removed, in the manner provided by this chapter. Except as
 1011 provided under subsection (5), the benefit director shall be
 1012 independent and may serve as a benefit officer. The articles of
 1013 incorporation or bylaws may prescribe additional qualifications
 1014 of the benefit director.

1015 (3) Unless the articles of incorporation or bylaws provide

Page 35 of 70

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

27-00303B-14

2014654

1016 otherwise, the benefit director shall prepare, and the benefit
 1017 corporation shall include in the annual benefit report to
 1018 shareholders required under s. 607.612, the opinion of the
 1019 benefit director on the following:

1020 (a) Whether the benefit corporation in all material
 1021 respects acted in accordance with its general public benefit
 1022 purpose and any specific public benefit purpose during the
 1023 period covered by the report.

1024 (b) Whether the directors and officers complied with ss.
 1025 607.607(1) and 607.609(1).

1026 (c) Whether the benefit corporation or its directors or
 1027 officers failed to comply with paragraph (a) or s. 607.607(1) or
 1028 s. 607.609(1), including a written description of the ways in
 1029 which the benefit corporation or its directors failed to comply.

1030 (4) The action or inaction of an individual in his or her
 1031 capacity as a benefit director shall constitute for all purposes
 1032 an action or inaction of that individual in his or her capacity
 1033 as a director of the benefit corporation.

1034 (5) The benefit director of a corporation formed under
 1035 chapter 621 is not required to be independent.

1036 Section 29. Section 607.609, Florida Statutes, is created
 1037 to read:

1038 607.609 Standard of conduct for officers.—

1039 (1) If an officer of a benefit corporation reasonably
 1040 believes that a matter may have a material effect on the ability
 1041 of the corporation to create, or the creation by the corporation
 1042 of, a general public benefit or a specific public benefit
 1043 identified in the articles of incorporation and the officer has
 1044 discretion to act on the matter, the officer shall consider the

Page 36 of 70

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

27-00303B-14

2014654__

1045 interests and factors provided in s. 607.607(1).

1046 (2) The officer's consideration of interests and factors
 1047 under subsection (1) does not constitute a violation of s.
 1048 607.0841.

1049 (3) Except as provided in the articles of incorporation, an
 1050 officer is not personally liable for monetary damages to the
 1051 corporation or to any other person for the failure of the
 1052 benefit corporation to pursue or create a general public benefit
 1053 or a specific public benefit; however, he or she is subject to
 1054 s. 607.0841.

1055 (4) Except as provided in the articles of incorporation, an
 1056 officer does not have a duty to a person who is a beneficiary of
 1057 the general public benefit purpose or any specific public
 1058 benefit purpose of the benefit corporation arising from the
 1059 status of the person as a beneficiary.

1060 Section 30. Section 607.610, Florida Statutes, is created
 1061 to read:

1062 607.610 Benefit officer.-

1063 (1) A benefit corporation may designate an officer as the
 1064 benefit officer.

1065 (2) The benefit officer has the powers and duties set forth
 1066 in the bylaws or determined by the board of directors, which may
 1067 include, but are not limited to:

1068 (a) Powers and duties relating to the general public
 1069 benefit or a specific public benefit purpose of the corporation;
 1070 and

1071 (b) The duty to prepare the annual benefit report required
 1072 under s. 607.612.

1073 Section 31. Section 607.611, Florida Statutes, is created

27-00303B-14

2014654__

1074 to read:

1075 607.611 Right of action.-

1076 (1) (a) Except in a benefit enforcement proceeding, no
 1077 person may bring an action or assert a claim against a benefit
 1078 corporation or its directors or officers with respect to:

1079 1. A failure to pursue or create a general public benefit
 1080 or a specific public benefit set forth in its articles of
 1081 incorporation; or

1082 2. A violation of an obligation, duty, or standard of
 1083 conduct under this part.

1084 (b) A benefit corporation is not liable for monetary
 1085 damages under this part for the failure of the benefit
 1086 corporation to pursue or create a general public benefit or a
 1087 specific public benefit.

1088 (2) A benefit enforcement proceeding may be commenced or
 1089 maintained only:

1090 (a) Directly by the benefit corporation; or

1091 (b) Derivatively by:

1092 1. A shareholder of record on the date of the action or
 1093 inaction complained of in the benefit enforcement proceeding;

1094 2. A director;

1095 3. A person or group of persons that owns beneficially or
 1096 of record 5 percent or more of the outstanding equity interests
 1097 in an entity of which the benefit corporation is a subsidiary on
 1098 the date of the action or inaction complained of in the
 1099 proceeding; or

1100 4. Any other person who is specified in the articles of
 1101 incorporation or bylaws of the benefit corporation.

1102 Section 32. Section 607.612, Florida Statutes, is created

27-00303B-14

2014654__

1103 to read:

1104 607.612 Preparation of annual benefit report.—1105 (1) Unless it is prepared by a benefit director or a
1106 benefit officer, the board of directors shall prepare an annual
1107 benefit report that includes all of the following:1108 (a) A narrative description of:1109 1. The ways in which the benefit corporation pursued a
1110 general public benefit during the year and the extent to which
1111 the general public benefit was created.1112 2. Any circumstance that has hindered the pursuit or
1113 creation of a general public benefit or a specific public
1114 benefit by the benefit corporation.1115 3. The process and rationale for selecting or changing the
1116 third-party standard used to prepare the benefit report.1117 (b) The name of the benefit director and the benefit
1118 officer, if those positions exist, and the respective business
1119 addresses to which correspondence may be directed.1120 (c) If the corporation has a benefit director, the
1121 statement as provided in s. 607.608(3).1122 (d) A statement of any connection between the organization
1123 that established the third-party standard, or its directors,
1124 officers, or any holder of 5 percent or more of the governance
1125 interests in the organization, and the benefit corporation or
1126 its directors, officers, or any holder of 5 percent or more of
1127 the outstanding shares of the benefit corporation, including any
1128 financial or governance relationship that might materially
1129 affect the credibility of the use of the third-party standard.1130 (2) The annual benefit report must be prepared in
1131 accordance with a third-party standard that is:

Page 39 of 70

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

27-00303B-14

2014654__

1132 1. Applied consistently with any previous application in
1133 prior annual benefit reports; or1134 2. Accompanied by an explanation of the reasons for any
1135 inconsistent application or any change in the standard from the
1136 immediate prior report.1137 (3) If, during the year covered by an annual benefit
1138 report, a benefit director resigned from, or refused to stand
1139 for reelection to, his or her position, or was removed from his
1140 or her position, and he or she furnished written correspondence
1141 to the benefit corporation concerning the circumstances
1142 surrounding his or her departure, that correspondence must be
1143 included as an exhibit in the annual benefit report.1144 (4) The annual benefit report and the assessment of the
1145 performance of the benefit corporation in the annual benefit
1146 report required under subsection (2) are not required to be
1147 audited or certified by a third-party standards provider.1148 Section 33. Section 607.613, Florida Statutes, is created
1149 to read:1150 607.613 Availability of annual benefit report.—1151 (1) Each benefit corporation shall send its annual benefit
1152 report to each shareholder:1153 (a) Within 120 days after the end of the fiscal year of the
1154 benefit corporation; or1155 (b) At the same time that the benefit corporation delivers
1156 any other annual report to its shareholders.1157 (2) A benefit corporation shall post each annual benefit
1158 report on the public portion of its website, if any, and it
1159 shall remain posted for at least 3 years.1160 (3) If a benefit corporation does not have a website, the

Page 40 of 70

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

27-00303B-14

2014654__

1161 benefit corporation shall provide a copy of its most recent
 1162 annual benefit report, without charge, to any person who
 1163 requests a copy.

1164 (4) If a benefit corporation does not comply with the
 1165 annual benefit report delivery requirement, the circuit court in
 1166 the county in which the principal office of the benefit
 1167 corporation is located or, if no office is located in this
 1168 state, the county in which its registered office is located,
 1169 may, after a shareholder of the benefit corporation requests a
 1170 copy, summarily order the corporation to furnish the report. If
 1171 the court orders the report to be furnished, the court may also
 1172 order the benefit corporation to pay the shareholder's costs,
 1173 including reasonable attorney fees, which were incurred in
 1174 obtaining the order and otherwise enforce his or her rights
 1175 under this section.

1176 Section 34. Subsection (1) of section 617.0401, Florida
 1177 Statutes, is amended to read:

1178 617.0401 Corporate name.—

1179 (1) A corporate name:

1180 (a) Must contain the word "corporation" or "incorporated"
 1181 or the abbreviation "Corp." ~~"corp."~~ or "Inc." ~~"inc."~~ or words or
 1182 abbreviations of like import in language, as will clearly
 1183 indicate that it is a corporation instead of a natural person,
 1184 unincorporated association, or partnership. The name of the
 1185 corporation may not contain the word "company" or its
 1186 abbreviation "Co." ~~"co."~~

1187 (b) May contain the word "cooperative" or "co-op" only if
 1188 the resulting name is distinguishable from the name of any
 1189 corporation, agricultural cooperative marketing association, or

Page 41 of 70

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

27-00303B-14

2014654__

1190 nonprofit cooperative association existing or doing business in
 1191 this state under part I of chapter 607, chapter 618, or chapter
 1192 619.~~†~~

1193 (c) May not contain language stating or implying that the
 1194 corporation is organized for a purpose other than that permitted
 1195 in this act and its articles of incorporation.~~†~~

1196 (d) May not contain language stating or implying that the
 1197 corporation is connected with a state or federal government
 1198 agency or a corporation chartered under the laws of the United
 1199 States.~~†~~ ~~and~~

1200 (e) Must be distinguishable from the names of all other
 1201 entities or filings that are on file with the Division of
 1202 Corporations, except fictitious name registrations pursuant to
 1203 s. 865.09, general partnership registrations pursuant to s.
 1204 620.8105, and limited liability partnership statements pursuant
 1205 to s. 620.9001 which are organized, registered, or reserved
 1206 under the laws of this state, ~~that are on file with the Division~~
 1207 ~~of Corporations.~~ A name that is different from a name of another
 1208 entity or filing due to any of the following is not considered
 1209 distinguishable:

1210 1. A suffix.

1211 2. A definite or indefinite article.

1212 3. The word "and" and the symbol "&."

1213 4. The singular, plural, or possessive form of a word.

1214 5. A recognized abbreviation of a root word.

1215 6. A punctuation mark or a symbol.

1216 Section 35. Subsection (4) of section 620.1108, Florida
 1217 Statutes, is amended to read:

1218 620.1108 Name.—

Page 42 of 70

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

27-00303B-14

2014654__

1219 (4) The name of a limited partnership must be
 1220 distinguishable in the records of the Department of State from
 1221 the names of all other entities or filings that are on file with
 1222 the Department of State, except fictitious name registrations
 1223 pursuant to s. 865.09, general partnership registrations
 1224 pursuant to s. 620.8105, and limited liability partnership
 1225 statements pursuant to s. 620.9001 which are organized,
 1226 registered, or reserved under the laws of this state, ~~the names~~
 1227 ~~of which are on file with the Department of State. A name that~~
 1228 is different from the name of another entity or filing due to
 1229 any of the following is not considered distinguishable:

1230 (a) A suffix.

1231 (b) A definite or indefinite article.

1232 (c) The word "and" and the symbol "&."

1233 (d) The singular, plural, or possessive form of a word.

1234 (e) A recognized abbreviation of a root word.

1235 (f) A punctuation mark or a symbol.

1236 Section 36. Subsection (1) of section 48.091, Florida
 1237 Statutes, is amended to read:

1238 48.091 Corporations; designation of registered agent and
 1239 registered office.—

1240 (1) Every Florida corporation and every foreign corporation
 1241 now qualified or hereafter qualifying to transact business in
 1242 this state shall designate a registered agent and registered
 1243 office in accordance with part I of chapter 607.

1244 Section 37. Paragraph (d) of subsection (6) of section
 1245 215.555, Florida Statutes, is amended to read:

1246 215.555 Florida Hurricane Catastrophe Fund.—

1247 (6) REVENUE BONDS.—

Page 43 of 70

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

27-00303B-14

2014654__

1248 (d) ~~State Board of Administration Finance Corporation.—~~

1249 1. In addition to the findings and declarations in
 1250 subsection (1), the Legislature also finds and declares that:

1251 a. The public benefits corporation created under this
 1252 paragraph will provide a mechanism necessary for the cost-
 1253 effective and efficient issuance of bonds. This mechanism will
 1254 eliminate unnecessary costs in the bond issuance process,
 1255 thereby increasing the amounts available to pay reimbursement
 1256 for losses to property sustained as a result of hurricane
 1257 damage.

1258 b. The purpose of such bonds is to fund reimbursements
 1259 through the Florida Hurricane Catastrophe Fund to pay for the
 1260 costs of construction, reconstruction, repair, restoration, and
 1261 other costs associated with damage to properties of
 1262 policyholders of covered policies due to the occurrence of a
 1263 hurricane.

1264 c. The efficacy of the financing mechanism will be enhanced
 1265 by the corporation's ownership of the assessments, by the
 1266 insulation of the assessments from possible bankruptcy
 1267 proceedings, and by covenants of the state with the
 1268 corporation's bondholders.

1269 2.a. There is created a public benefits corporation, which
 1270 is an instrumentality of the state, to be known as the State
 1271 Board of Administration Finance Corporation.

1272 b. The corporation shall operate under a five-member board
 1273 of directors consisting of the Governor or a designee, the Chief
 1274 Financial Officer or a designee, the Attorney General or a
 1275 designee, the director of the Division of Bond Finance of the
 1276 State Board of Administration, and the Chief Operating Officer

Page 44 of 70

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

27-00303B-14

2014654__

1277 of the Florida Hurricane Catastrophe Fund.

1278 c. The corporation has all of the powers of corporations
1279 under part I of chapter 607 and under chapter 617, subject only
1280 to ~~the provisions of~~ this subsection.

1281 d. The corporation may issue bonds and engage in such other
1282 financial transactions as are necessary to provide sufficient
1283 funds to achieve the purposes of this section.

1284 e. The corporation may invest in any of the investments
1285 authorized under s. 215.47.

1286 f. There shall be no liability on the part of, and no cause
1287 of action shall arise against, any board members or employees of
1288 the corporation for any actions taken by them in the performance
1289 of their duties under this paragraph.

1290 3.a. In actions under chapter 75 to validate any bonds
1291 issued by the corporation, the notice required under ~~by~~ s. 75.06
1292 shall be published in two newspapers of general circulation in
1293 the state, and the complaint and order of the court shall be
1294 served only on the State Attorney of the Second Judicial
1295 Circuit.

1296 b. The state hereby covenants with holders of bonds of the
1297 corporation that the state will not repeal or abrogate the power
1298 of the board to direct the Office of Insurance Regulation to
1299 levy the assessments and to collect the proceeds of the revenues
1300 pledged to the payment of such bonds as long as any such bonds
1301 remain outstanding unless adequate provision has been made for
1302 the payment of such bonds pursuant to the documents authorizing
1303 the issuance of such bonds.

1304 4. The bonds of the corporation are not a debt of the state
1305 or of any political subdivision, and neither the state nor any

Page 45 of 70

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

27-00303B-14

2014654__

1306 political subdivision is liable on such bonds. The corporation
1307 does not have the power to pledge the credit, the revenues, or
1308 the taxing power of the state or of any political subdivision.
1309 The credit, revenues, or taxing power of the state or of any
1310 political subdivision shall not be deemed to be pledged to the
1311 payment of any bonds of the corporation.

1312 5.a. The property, revenues, and other assets of the
1313 corporation; the transactions and operations of the corporation
1314 and the income from such transactions and operations; and all
1315 bonds issued under this paragraph and interest on such bonds are
1316 exempt from taxation by the state and any political subdivision,
1317 including the intangibles tax under chapter 199 and the income
1318 tax under chapter 220. This exemption does not apply to any tax
1319 imposed by chapter 220 on interest, income, or profits on debt
1320 obligations owned by corporations other than the State Board of
1321 Administration Finance Corporation.

1322 b. All bonds of the corporation shall be and constitute
1323 legal investments without limitation for all public bodies of
1324 this state; for all banks, trust companies, savings banks,
1325 savings associations, savings and loan associations, and
1326 investment companies; for all administrators, executors,
1327 trustees, and other fiduciaries; for all insurance companies and
1328 associations and other persons carrying on an insurance
1329 business; and for all other persons who are now or may hereafter
1330 be authorized to invest in bonds or other obligations of the
1331 state and shall be and constitute eligible securities to be
1332 deposited as collateral for the security of any state, county,
1333 municipal, or other public funds. This sub-subparagraph is shall
1334 ~~be considered as~~ additional and supplemental authority and may

Page 46 of 70

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

27-00303B-14 2014654__

1335 ~~shall~~ not be limited without specific reference to this sub-
1336 subparagraph.

1337 6. The corporation and its corporate existence continues
1338 ~~shall continue~~ until terminated by law; however, ~~no~~ such law may
1339 not shall take effect as long as the corporation has bonds
1340 outstanding unless adequate provision has been made for the
1341 payment of such bonds pursuant to the documents authorizing the
1342 issuance of such bonds. Upon termination of the existence of the
1343 corporation, all of its rights and properties in excess of its
1344 obligations shall pass to and be vested in the state.

1345 7. The State Board of Administration Finance Corporation is
1346 for all purposes the successor to the Florida Hurricane
1347 Catastrophe Fund Finance Corporation.

1348 Section 38. Subsection (1) of section 243.54, Florida
1349 Statutes, is amended to read:

1350 243.54 Powers of the authority.—The purpose of the
1351 authority is to assist institutions of higher education in
1352 constructing, financing, and refinancing projects throughout the
1353 state and, for this purpose, the authority may:

1354 (1) Exercise all powers granted to corporations under part
1355 I of the Florida Business Corporation Act, chapter 607.

1356 Section 39. Section 310.171, Florida Statutes, is amended
1357 to read:

1358 310.171 Pilots may incorporate themselves.—Any one or more
1359 licensed state pilots may incorporate in the manner provided
1360 under part I of chapter 607 or chapter 621.

1361 Section 40. Section 310.181, Florida Statutes, is amended
1362 to read:

1363 310.181 Corporate powers.—All the rights, powers, and

27-00303B-14 2014654__

1364 liabilities conferred or imposed by the laws of Florida relating
1365 to corporations for profit organized under part I of chapter 607
1366 or under chapter 608 before January 1, 1976, or to corporations
1367 organized under chapter 621 ~~shall~~ apply to corporations
1368 organized pursuant to s. 310.171.

1369 Section 41. Paragraph (c) of subsection (4) of section
1370 329.10, Florida Statutes, is amended to read:

1371 329.10 Aircraft registration.—

1372 (4) It is a violation of this section for any person or
1373 corporate entity to knowingly supply false information to any
1374 governmental entity in regard to ownership by it or another
1375 firm, business, or corporation of an aircraft in or operated in
1376 this state if it is determined that such corporate entity or
1377 other firm, business, or corporation:

1378 (c) Has lapsed into a state of no longer being a legal
1379 entity in this state as defined in part I of chapter 607 or s.
1380 865.09, and no documented attempt has been made to correct such
1381 information with the governmental entity for a period of 90 days
1382 after the date on which such lapse took effect with the
1383 Secretary of State.

1384 Section 42. Subsection (1) of section 339.412, Florida
1385 Statutes, is amended to read:

1386 339.412 Powers of corporation.—As to designated projects
1387 and in addition to other powers prescribed by law, a corporation
1388 may exercise the following powers with respect to the promotion
1389 and development of transportation facilities, pursuant to a
1390 written contract for the same, together with all powers
1391 incidental thereto or necessary for the performance of those
1392 hereinafter stated:

27-00303B-14

2014654__

1393 (1) The corporation may exercise all the powers as granted
 1394 by the department to work directly with landowners, local and
 1395 state governmental agencies, elected officials, and any other
 1396 person to support those activities required to promote and
 1397 develop the projects. These activities shall include:
 1398 (a) Acquiring, holding, investing, and administering
 1399 property and transferring title of such property to the
 1400 department for development of projects on behalf of the
 1401 department;
 1402 (b) Performing preliminary and final alignment studies in a
 1403 manner consistent with state and federal laws;
 1404 (c) Receiving contributions of land for rights-of-way and
 1405 cash donations to be applied to the purchase of rights-of-way
 1406 not donated or to be applied to the design or construction of
 1407 the projects;
 1408 (d) Reviewing candidates for advisory directorships and
 1409 adding or removing such advisory directors as may be
 1410 appropriate;
 1411 (e) Retaining such administrative staff and legal, public
 1412 relations, and engineering services as may be required for the
 1413 development of the projects and paying such employees and
 1414 consultants from funds donated for this purpose;
 1415 (f) Preparing such exhibits, right-of-way documents,
 1416 environmental reports, schematics, and preliminary and final
 1417 engineering plans as are necessary for the development of the
 1418 projects;
 1419 (g) Borrowing money to meet any expenses or needs
 1420 associated with the regular operations of the corporation or a
 1421 particular project; provided, however, that no corporation shall

Page 49 of 70

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

27-00303B-14

2014654__

1422 have the power to issue bonds, the provisions of part I of
 1423 chapter ~~chapters~~ 607 and chapter 617 notwithstanding;

1424 (h) Making official presentations to the state and other
 1425 affected agencies or groups concerning the development of the
 1426 projects;
 1427 (i) Issuing press releases and other material to promote
 1428 the activities of the projects; and
 1429 (j) Performing any other functions requested by the
 1430 department in order to promote and develop the projects.
 1431
 1432 Nothing in this act empowers the corporation to enter into any
 1433 contracts for construction or to undertake any construction, on
 1434 behalf of the department.
 1435 Section 43. Subsection (4) of section 420.101, Florida
 1436 Statutes, is amended to read:
 1437 420.101 Housing Development Corporation of Florida;
 1438 creation, membership, and purposes.—
 1439 (4) Whenever the articles of incorporation have been filed
 1440 in the Department of State and approved by it and all filing
 1441 fees and taxes prescribed by part I of chapter 607 have been
 1442 paid, the subscribers and their successors and assigns shall
 1443 constitute a corporation, and the corporation shall then be
 1444 authorized to commence business, and stock thereof to the extent
 1445 herein or hereafter duly authorized may from time to time be
 1446 issued.
 1447 Section 44. Section 420.111, Florida Statutes, is amended
 1448 to read:
 1449 420.111 Housing Development Corporation of Florida;
 1450 additional powers.—In furtherance of its purposes and in

Page 50 of 70

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

27-00303B-14

2014654__

1451 addition to the powers now or hereafter conferred on business
 1452 corporations by part I of chapter 607, the corporation shall,
 1453 subject to the restrictions and limitations ~~herein~~ contained in
 1454 this section, have the following powers:

1455 (1) To elect, appoint, and employ officers, agents and
 1456 employees and to make contracts and incur liabilities for any of
 1457 the purposes of the corporation, except that the corporation may
 1458 ~~shall~~ not incur any secondary liability by way of guaranty or
 1459 endorsement of the obligations of any person, firm, corporation,
 1460 joint-stock company, association, or trust, or in any other
 1461 manner.

1462 (2) To borrow money from its stockholders, other financial
 1463 institutions, and state and federal agencies for any of the
 1464 purposes of the corporation; to issue therefor its bonds,
 1465 debentures, notes, or other evidences of indebtedness, whether
 1466 secured or unsecured, and to secure the same by mortgage,
 1467 pledge, deed of trust, or other lien on its property,
 1468 franchises, rights, and privileges of every kind and nature, or
 1469 any part thereof or interest therein, without securing
 1470 stockholder approval.

1471 (3) To make loans to any person, firm, corporation, joint-
 1472 stock company, association, or trust and to regulate the terms
 1473 and conditions with respect to any such loans and the charges
 1474 for interest and service connected therewith, provided subsidies
 1475 may be in the form of below market interest rates or such other
 1476 assistance as determined by the board with the concurrence of
 1477 the applicable regulatory agencies governing the several
 1478 stockholder industries.

1479 (4) To purchase, receive, hold, lease, or otherwise

Page 51 of 70

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

27-00303B-14

2014654__

1480 acquire, and to sell, convey, transfer, lease, or otherwise
 1481 dispose of, real and personal property, together with such
 1482 rights and privileges as may be incidental and appurtenant
 1483 thereto and the use thereof, including, but not restricted to,
 1484 any real or personal property acquired by the corporation from
 1485 time to time in the satisfaction of debts or enforcement of
 1486 obligations.

1487 (5) For the purposes of foreclosure, to acquire the good
 1488 will, business, rights, real and personal property, and other
 1489 assets, or any part thereof, or interest therein, of any
 1490 persons, firms, corporations, joint-stock companies,
 1491 associations or trusts, and to assume, undertake, or pay the
 1492 obligations, debts and liabilities of any such person, firm,
 1493 corporation, joint-stock company, association or trust; to
 1494 acquire improved or unimproved real estate for the purpose of
 1495 constructing new housing or rehabilitation thereof; for the
 1496 purposes of disposing of such real estate to others for the
 1497 construction of housing or rehabilitation thereof; and to
 1498 acquire, construct or reconstruct, alter, repair, maintain,
 1499 operate, sell, convey, transfer, lease, or otherwise dispose of
 1500 such housing, provided, however that nothing herein contained
 1501 shall authorize the acquisition, construction, reconstruction,
 1502 or operation of any public lodging establishment as defined in
 1503 chapter 509.

1504 (6) To acquire, subscribe for, own, hold, sell, assign,
 1505 transfer, mortgage, pledge, or otherwise dispose of the stock,
 1506 shares, bonds, debentures, notes, or other securities and
 1507 evidences of interest in, or indebtedness of, any person, firm,
 1508 corporation, joint-stock company, association, or trust, and,

Page 52 of 70

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

27-00303B-14

2014654__

1509 while the owner or holder thereof, to exercise all the rights,
1510 powers, and privileges of ownership, including the right to vote
1511 thereon.

1512 (7) To mortgage, pledge, or otherwise encumber any
1513 property, right, or thing of value, acquired pursuant to the
1514 powers contained in subsection (4), subsection (5), or
1515 subsection (6), as security for the payment of any part of the
1516 purchase price thereof.

1517 (8) To cooperate with, and avail itself of the facilities
1518 of, the United States Department of Housing and Urban
1519 Development, the Department of Economic Opportunity, and any
1520 other similar local, state, or Federal Government agency; and to
1521 cooperate with and assist, and otherwise encourage,
1522 organizations in the various communities of the state on the
1523 promotion, assistance, and development of the housing and
1524 economic welfare of such communities or of this state or any
1525 part thereof.

1526 (9) To do all acts and things necessary or convenient to
1527 carry out the powers expressly granted in this part.

1528 Section 45. Subsection (2) of section 420.161, Florida
1529 Statutes, is amended to read:

1530 420.161 Housing Development Corporation of Florida; period
1531 of existence; method of dissolution.—

1532 (2) The corporation may, upon the affirmative vote of two-
1533 thirds of the votes to which the stockholders are shall be
1534 entitled, dissolve the said corporation as provided under part I
1535 of by chapter 607, as long as that part does insofar as chapter
1536 607 is not in conflict with the provisions of this act. Upon any
1537 dissolution of the corporation, ~~none of~~ the corporation's assets

Page 53 of 70

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

27-00303B-14

2014654__

1538 may not shall be distributed to the stockholders until all sums
1539 due the members of the corporation as creditors thereof have
1540 been paid in full.

1541 Section 46. Subsection (9) of section 440.02, Florida
1542 Statutes, is amended to read:

1543 440.02 Definitions.—When used in this chapter, unless the
1544 context clearly requires otherwise, the following terms shall
1545 have the following meanings:

1546 (9) "Corporate officer" or "officer of a corporation" means
1547 any person who fills an office provided for in the corporate
1548 charter or articles of incorporation filed with the Division of
1549 Corporations of the Department of State or as authorized
1550 ~~permitted~~ or required under part I of by chapter 607. The term
1551 "officer of a corporation" includes a member owning at least 10
1552 percent of a limited liability company created and approved
1553 under chapter 608.

1554 Section 47. Paragraph (d) of subsection (10) of section
1555 440.386, Florida Statutes, is amended to read:

1556 440.386 Individual self-insurers' insolvency; conservation;
1557 liquidation.—

1558 (10) TRANSFERS PRIOR TO PETITION.—

1559 (d) The personal liability of the officers or directors of
1560 an insolvent individual self-insurer is shall be subject to part
1561 I of the provisions of chapter 607 and the penalties provided
1562 therein.

1563 Section 48. Subsection (3) of section 609.08, Florida
1564 Statutes, is amended to read:

1565 609.08 Merger of association into wholly owned subsidiary
1566 corporation; dissenters' rights of appraisal.—

Page 54 of 70

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

27-00303B-14

2014654__

1567 (3) If the surviving corporation is to be governed by the
 1568 laws of any jurisdiction other than this state, it shall comply
 1569 with part I of the provisions of chapter 607 with respect to
 1570 foreign corporations if it is to transact business in this
 1571 state, and in every case it shall file with the Department of
 1572 State of this state:

1573 (a) An agreement that it may be served with process in this
 1574 state in any proceeding for the enforcement of any obligation of
 1575 the association and in any proceeding for the enforcement of any
 1576 rights under the declaration of trust of the association of a
 1577 dissenting shareholder of the association against the surviving
 1578 corporation.

1579 (b) An irrevocable appointment of the Secretary of State as
 1580 its agent to accept service of process in any such proceeding.

1581 (c) An agreement that it will promptly pay to the
 1582 dissenting shareholders of the association the amount, if any,
 1583 to which they are ~~shall be~~ entitled under ~~the provisions of~~ its
 1584 declaration of trust with respect to the rights of dissenting
 1585 shareholders.

1586 Section 49. Section 617.1908, Florida Statutes, is amended
 1587 to read:

1588 617.1908 Applicability of Florida Business Corporation
 1589 Act.—Except as ~~otherwise~~ made applicable by specific reference
 1590 in any other section of this chapter, part I the provisions of
 1591 chapter 607, the Florida Business Corporation Act, does shall
 1592 not apply to any corporations not for profit.

1593 Section 50. Section 618.221, Florida Statutes, is amended
 1594 to read:

1595 618.221 Conversion into a corporation for profit.—Any

27-00303B-14

2014654__

1596 association incorporated under or that has adopted the
 1597 provisions of this chapter, may, by a majority vote of its
 1598 stockholders or members be brought under part I of the
 1599 ~~provisions of~~ chapter 607, as a corporation for profit by
 1600 surrendering all right to carry on its business under this
 1601 chapter, and the privileges and immunities incident thereto. It
 1602 shall make out in duplicate a statement signed and sworn to by
 1603 its directors to the effect that the association has, by a
 1604 majority vote of its stockholders or members, decided to
 1605 surrender all rights, powers, and privileges as a nonprofit
 1606 cooperative marketing association under this chapter and to do
 1607 business under and be bound by part I of the provisions of said
 1608 chapter 607, as a corporation for profit and has authorized all
 1609 changes accordingly. Articles of incorporation shall be
 1610 delivered to the Department of State for filing as required
 1611 under part I of chapter 607 ~~in and by s. 607.164~~, except that
 1612 they shall be signed by the members of the then board of
 1613 directors. The filing fees and taxes shall be as provided under
 1614 part I of ~~in~~ chapter 607. Such articles of incorporation shall
 1615 adequately protect and preserve the relative rights of the
 1616 stockholders or members of the association so converting into a
 1617 corporation for profit; provided that no rights or obligations
 1618 due any stockholder or member of such association or any other
 1619 person, firm, or corporation which has not been waived or
 1620 satisfied shall be impaired by such conversion into a
 1621 corporation for profit as herein authorized.

1622 Section 51. Section 619.04, Florida Statutes, is amended to
 1623 read:

1624 619.04 Articles of incorporation.—Each association formed

27-00303B-14

2014654__

1625 under this chapter must prepare and file articles of
 1626 incorporation in the same manner and under the same regulations
 1627 as required under part I of chapter 607, and therein shall set
 1628 forth:

- 1629 (1) The name of the association.
 1630 (2) The purpose for which it is formed.
 1631 (3) The place where its principal business will be
 1632 transacted.
 1633 (4) The term for which it is to exist, not exceeding 50
 1634 years.
 1635 (5) The number of directors thereof, which must not be less
 1636 than three and which may be any number in excess thereof, and
 1637 the names and residences of those selected for the first year
 1638 and until their successors shall have been elected and shall
 1639 have accepted office.
 1640 (6) Whether the voting power and the property rights and
 1641 interest of each member shall be equal, or unequal, and if
 1642 unequal these articles shall set forth a general rule applicable
 1643 to all members by which the voting power and the property rights
 1644 and interests, respectively, of each member may and shall be
 1645 determined and fixed, but the association shall have power to
 1646 admit new members, who shall be entitled to vote and to share in
 1647 the property of the association with the old members, in
 1648 accordance with such general rule. This provision of the
 1649 articles of incorporation ~~may shall~~ not be altered, amended, or
 1650 repealed except by the unanimous written consent or the vote of
 1651 all the members.
 1652 (7) Said articles must be subscribed by the original
 1653 members and acknowledged by one of them before an officer

Page 57 of 70

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

27-00303B-14

2014654__

1654 authorized by the law of this state to take and certify
 1655 acknowledgments of deeds of conveyance, and shall be filed in
 1656 accordance with the provisions of law, and when so filed the
 1657 said articles of incorporation or certified copies thereof shall
 1658 be received in all the courts of this state and other places as
 1659 prima facie evidence of the facts contained therein.

1660 Section 52. Subsection (3) of section 624.430, Florida
 1661 Statutes, is amended to read:

1662 624.430 Withdrawal of insurer or discontinuance of writing
 1663 certain kinds or lines of insurance.—

1664 (3) Upon office approval of the surrender of the
 1665 certificate of authority of a domestic property and casualty
 1666 insurer that is a corporation, the insurer may initiate the
 1667 dissolution of the corporation in accordance with the applicable
 1668 provisions of part I of chapter 607.

1669 Section 53. Subsection (1) of section 624.462, Florida
 1670 Statutes, is amended to read:

1671 624.462 Commercial self-insurance funds.—

1672 (1) Any group of persons may form a commercial self-
 1673 insurance fund for the purpose of pooling and spreading
 1674 liabilities of its group members in any commercial property or
 1675 casualty risk or surety insurance. Any fund established pursuant
 1676 to subparagraph (2)(a)1. may be organized as a corporation under
 1677 part I of chapter 607.

1678 Section 54. Subsection (3) of section 624.489, Florida
 1679 Statutes, is amended to read:

1680 624.489 Liability of trustees of self-insurance trust fund
 1681 and directors of self-insurance funds operating as
 1682 corporations.—

Page 58 of 70

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

27-00303B-14

2014654__

1683 (3) The immunities from liability provided in this section
 1684 with respect to trustees also apply to members of the board of
 1685 directors of a commercial self-insurance fund organized as a
 1686 corporation under part I of chapter 607 if the board of
 1687 directors has contracted with an administrator authorized under
 1688 s. 626.88 to administer the day-to-day affairs of the fund.

1689 Section 55. Section 628.041, Florida Statutes, is amended
 1690 to read:

1691 628.041 Applicability of general corporation statutes.—The
 1692 applicable statutes of this state relating to the powers and
 1693 procedures of domestic private corporations formed for profit
 1694 shall apply to domestic stock insurers and to domestic mutual
 1695 insurers, except:

1696 (1) As to any domestic mutual insurers incorporated
 1697 pursuant to chapter 617, which chapter shall govern such
 1698 insurers when in conflict with part I of chapter 607; and

1699 (2) When in conflict with the express provisions of this
 1700 code.

1701 Section 56. Subsection (4) of section 631.262, Florida
 1702 Statutes, is amended to read:

1703 631.262 Transfers prior to petition.—

1704 (4) The personal liability of the officers or directors of
 1705 an insolvent insurer ~~is shall be~~ subject to part I of the
 1706 ~~provisions of~~ chapter 607 and the penalties provided therein.

1707 Section 57. Subsection (1) of section 636.204, Florida
 1708 Statutes, is amended to read:

1709 636.204 License required.—

1710 (1) Before doing business in this state as a discount
 1711 medical plan organization, an entity must be a corporation, a

27-00303B-14

2014654__

1712 limited liability company, or a limited partnership,
 1713 incorporated, organized, formed, or registered under the laws of
 1714 this state or authorized to transact business in this state in
 1715 accordance with part I of chapter 607, chapter 608, chapter 617,
 1716 chapter 620, or chapter 865, and must be licensed by the office
 1717 as a discount medical plan organization or be licensed by the
 1718 office pursuant to chapter 624, part I of this chapter, or
 1719 chapter 641.

1720 Section 58. Section 641.2015, Florida Statutes, is amended
 1721 to read:

1722 641.2015 Incorporation required.—On or after October 1,
 1723 1985, any entity that has not yet obtained a certificate of
 1724 authority to operate a health maintenance organization in this
 1725 state shall be incorporated or shall be a division of a
 1726 corporation formed under the provisions of either part I of
 1727 chapter 607 or chapter 617 or shall be a public entity that is
 1728 organized as a political subdivision. In the case of a division
 1729 of a corporation, the financial requirements of this part shall
 1730 apply to the entire corporation. Incorporation shall not be
 1731 required of any entity which has already been issued an initial
 1732 certificate of authority prior to this date and which is not a
 1733 corporation on October 1, 1985, or which is incorporated in any
 1734 other state on October 1, 1985; nor shall incorporation be
 1735 required on renewal of any certificate of authority by such an
 1736 organization or be required of a public entity that is organized
 1737 as a political subdivision.

1738 Section 59. Subsection (1) of section 655.0201, Florida
 1739 Statutes, is amended to read:

1740 655.0201 Service of process, notice, or demand on financial

27-00303B-14

2014654__

1741 institutions.-

1742 (1) Process against any financial institution authorized by
1743 federal or state law to transact business in this state may be
1744 served in accordance with chapter 48, chapter 49, part I of
1745 chapter 607, or chapter 608, as appropriate.

1746 Section 60. Subsection (2) of section 658.23, Florida
1747 Statutes, is amended to read:

1748 658.23 Submission of articles of incorporation; contents;
1749 form; approval; filing; commencement of corporate existence;
1750 bylaws.-

1751 (2) The articles of incorporation shall contain:

1752 (a) The name of the proposed bank or trust company.

1753 (b) The general nature of the business to be transacted or
1754 a statement that the corporation may engage in any activity or
1755 business permitted by law. Such statement shall authorize all
1756 such activities and business by the corporation.

1757 (c) The amount of capital stock authorized, showing the
1758 maximum number of shares of par value common stock and of
1759 preferred stock, and of every kind, class, or series of each,
1760 together with the distinguishing characteristics and the par
1761 value of all shares.

1762 (d) The amount of capital with which the corporation will
1763 begin business, which ~~may shall~~ not be less than the amount
1764 required by the office pursuant to s. 658.21.

1765 (e) A provision that the corporation is to have perpetual
1766 existence unless existence is terminated pursuant to the
1767 financial institutions codes.

1768 (f) The initial street address of the main office of the
1769 corporation, which shall be in this state.

Page 61 of 70

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

27-00303B-14

2014654__

1770 (g) The number of directors, which shall be five or more,
1771 and the names and street addresses of the members of the initial
1772 board of directors.

1773 (h) A provision for preemptive rights, if applicable.

1774 (i) A provision authorizing the board of directors to
1775 appoint additional directors, pursuant to s. 658.33, if
1776 applicable.

1777
1778 The office shall provide to the proposed directors form articles
1779 of incorporation which must ~~shall~~ include only those provisions
1780 required under ~~by~~ this section or under part I of ~~by~~ chapter
1781 607. The form articles shall be acknowledged by the proposed
1782 directors and returned to the office for filing with the
1783 Department of State.

1784 Section 61. Paragraph (c) of subsection (11) of section
1785 658.2953, Florida Statutes, is amended to read:

1786 658.2953 Interstate branching.-

1787 (11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.-

1788 (c) An out-of-state bank may establish and maintain a de
1789 novo branch or acquire a branch in this state upon compliance
1790 with part I of chapter 607 or chapter 608 relating to doing
1791 business in this state as a foreign business entity, including
1792 maintaining a registered agent for service of process and other
1793 legal notice pursuant to s. 655.0201.

1794 Section 62. Section 658.30, Florida Statutes, is amended to
1795 read:

1796 658.30 Application of the Florida Business Corporation
1797 Act.-

1798 (1) When not in direct conflict with or superseded by

Page 62 of 70

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

27-00303B-14

2014654__

1799 specific provisions of the financial institutions codes, the
 1800 provisions of the Florida Business Corporation Act, part I of
 1801 chapter 607, ~~shall~~ extend to state banks and trust companies
 1802 formed under the financial institutions codes. This section
 1803 shall be liberally construed to accomplish the purposes stated
 1804 herein.

1805 (2) Without limiting the generality of subsection (1),
 1806 stockholders, directors, and committees of state banks and trust
 1807 companies may hold meetings in any manner authorized ~~permitted~~
 1808 by part I of chapter 607, and any action by stockholders,
 1809 directors, or committees required or authorized ~~permitted~~ to be
 1810 taken at a meeting may be taken without a meeting in any manner
 1811 authorized ~~provided or permitted~~ by part I of chapter 607.

1812 Section 63. Subsection (3) of section 658.36, Florida
 1813 Statutes, is amended to read:

1814 658.36 Changes in capital.—

1815 (3) If a bank or trust company's capital accounts have been
 1816 diminished by losses to less than the minimum required pursuant
 1817 to the financial institutions codes, the market value of its
 1818 shares of capital stock is less than the present par value, and
 1819 the bank or trust company cannot reasonably issue and sell new
 1820 shares of stock to restore its capital accounts at a share price
 1821 of par value or greater of the previously issued capital stock,
 1822 the office, notwithstanding any other provisions of part I of
 1823 chapter 607 or the financial institutions codes, may approve
 1824 special stock offering plans.

1825 (a) Such plans may include, but are not limited to,
 1826 mechanisms for stock splits including reverse splits;
 1827 revaluations of par value of outstanding stock; changes in

Page 63 of 70

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

27-00303B-14

2014654__

1828 voting rights, dividends, or other preferences; and creation of
 1829 new classes of stock.

1830 (b) The plan must be approved by majority vote of the bank
 1831 or trust company's entire board of directors and by holders of
 1832 two-thirds of the outstanding shares of stock.

1833 (c) The office shall disapprove a plan that provides unfair
 1834 or disproportionate benefits to existing shareholders,
 1835 directors, executive officers, or their related interests. The
 1836 office shall also disapprove any plan that is not likely to
 1837 restore the capital accounts to sufficient levels to achieve a
 1838 sustainable, safe, and sound financial institution.

1839 (d) For any bank or trust company that the office
 1840 determines to be a failing financial institution pursuant to s.
 1841 655.4185, the office may approve special stock offering plans
 1842 without a vote of the shareholders.

1843 Section 64. Section 663.03, Florida Statutes, is amended to
 1844 read:

1845 663.03 Applicability of the Florida Business Corporation
 1846 Act chapter 607.—Notwithstanding s. 607.01401(12) ~~the definition~~
 1847 ~~of the term "foreign corporation" appearing in s. 607.01401, all~~
 1848 ~~of the provisions of~~ part I of chapter 607 not in conflict with
 1849 the financial institutions codes which relate to foreign
 1850 corporations ~~shall~~ apply to all international banking
 1851 corporations and their offices doing business in this state.

1852 Section 65. Subsection (3) of section 663.04, Florida
 1853 Statutes, is amended to read:

1854 663.04 Requirements for carrying on financial institution
 1855 business.—An international banking corporation or trust company,
 1856 or any affiliate, subsidiary, or other person or business entity

Page 64 of 70

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

27-00303B-14

2014654__

1857 acting as an agent for, on behalf of, or for the benefit of such
 1858 international banking corporation or trust company who engages
 1859 in such activities from an office located in this state, may not
 1860 transact a banking or trust business, or maintain in this state
 1861 any office for carrying on such business, or any part thereof,
 1862 unless such corporation, trust company, affiliate, subsidiary,
 1863 person, or business entity:

1864 (3) Has filed with the office a certified copy of that
 1865 information required to be supplied to the Department of State
 1866 by those provisions of part I of chapter 607 which are
 1867 applicable to foreign corporations.

1868 Section 66. Paragraph (a) of subsection (1) of section
 1869 663.301, Florida Statutes, is amended to read:

1870 663.301 Definitions.—

1871 (1) As used in this part:

1872 (a) "International development bank" means a corporation
 1873 established for the purpose of promoting development in foreign
 1874 countries by directly or indirectly making funding available to
 1875 foreign business enterprises or foreign governments or by
 1876 providing financing in connection with import-export
 1877 transactions. Subject to the limitations contained in s.
 1878 663.313, an international development bank may be organized
 1879 ~~either~~ under chapter 617 as a corporation not for profit or
 1880 under part I of chapter 607 as a corporation for profit.

1881 Section 67. Subsection (2) of section 663.306, Florida
 1882 Statutes, is amended to read:

1883 663.306 Decision by office.—The office may, in its
 1884 discretion, approve or disapprove the application, but it shall
 1885 not approve the application unless it finds that:

Page 65 of 70

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

27-00303B-14

2014654__

1886 (2) The proposed capital structure is adequate, but in no
 1887 case may the paid-in capital stock be:

1888 (a) Less than \$400,000 in the case of an international
 1889 development bank organized under chapter 617 as a corporation
 1890 not for profit; or

1891 (b) The amount required for a state bank in the case of an
 1892 international development bank organized under part I of chapter
 1893 607 as a corporation for profit.

1894
 1895 The office may disallow any illegally obtained currency,
 1896 monetary instruments, funds, or other financial resources from
 1897 the capitalization requirements of this section.

1898 Section 68. Subsection (4) of section 663.313, Florida
 1899 Statutes, is amended to read:

1900 663.313 Ownership of stock.—

1901 (4) All of the shares of voting stock of an international
 1902 development bank organized under part I of chapter 607 as a
 1903 corporation for profit shall be owned by a regional development
 1904 bank or by one or more wholly owned subsidiaries of a regional
 1905 development bank.

1906 Section 69. Subsection (2) of section 718.111, Florida
 1907 Statutes, is amended to read:

1908 718.111 The association.—

1909 (2) POWERS AND DUTIES.—The powers and duties of the
 1910 association include those set forth in this section and, except
 1911 as expressly limited or restricted in this chapter, those set
 1912 forth in the declaration and bylaws and part I of chapter
 1913 ~~chapter~~ 607 and chapter 617, as applicable.

1914 Section 70. Subsection (10) of section 719.104, Florida

Page 66 of 70

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

27-00303B-14

2014654__

1915 Statutes, is amended to read:

1916 719.104 Cooperatives; access to units; records; financial
1917 reports; assessments; purchase of leases.—

1918 (10) POWERS AND DUTIES.—The powers and duties of the
1919 association include those set forth in this section and, except
1920 as expressly limited or restricted in this chapter, those set
1921 forth in the articles of incorporation and bylaws and part I of
1922 chapter ~~chapters~~ 607 and chapter 617, as applicable.

1923 Section 71. Subsection (5) of section 720.302, Florida
1924 Statutes, is amended to read:

1925 720.302 Purposes, scope, and application.—

1926 (5) Unless expressly stated to the contrary, corporations
1927 that operate residential homeowners' associations in this state
1928 shall be governed by and subject to part I of chapter 607, if
1929 the association was incorporated under that ~~part~~ chapter, or to
1930 chapter 617, if the association was incorporated under that
1931 chapter, and this chapter. This subsection is intended to
1932 clarify existing law.

1933 Section 72. Paragraph (c) of subsection (1) of section
1934 720.306, Florida Statutes, is amended to read:

1935 720.306 Meetings of members; voting and election
1936 procedures; amendments.—

1937 (1) QUORUM; AMENDMENTS.—

1938 (c) Unless otherwise provided in the governing documents as
1939 originally recorded or permitted by this chapter or chapter 617,
1940 an amendment may not materially and adversely alter the
1941 proportionate voting interest appurtenant to a parcel or
1942 increase the proportion or percentage by which a parcel shares
1943 in the common expenses of the association unless the record

Page 67 of 70

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

27-00303B-14

2014654__

1944 parcel owner and all record owners of liens on the parcels join
1945 in the execution of the amendment. For purposes of this section,
1946 a change in quorum requirements is not an alteration of voting
1947 interests. The merger or consolidation of one or more
1948 associations under a plan of merger or consolidation under part
1949 I of chapter 607 or chapter 617 is ~~shall not be considered~~ a
1950 material or adverse alteration of the proportionate voting
1951 interest appurtenant to a parcel.

1952 Section 73. Paragraph (a) of subsection (1) of section
1953 766.101, Florida Statutes, is amended to read:

1954 766.101 Medical review committee, immunity from liability.—

1955 (1) As used in this section:

1956 (a) The term "medical review committee" or "committee"
1957 means:

1958 1.a. A committee of a hospital or ambulatory surgical
1959 center licensed under chapter 395 or a health maintenance
1960 organization certificated under part I of chapter 641;~~;~~

1961 b. A committee of a physician-hospital organization, a
1962 provider-sponsored organization, or an integrated delivery
1963 system;~~;~~

1964 c. A committee of a state or local professional society of
1965 health care providers;~~;~~

1966 d. A committee of a medical staff of a licensed hospital or
1967 nursing home, provided the medical staff operates pursuant to
1968 written bylaws that have been approved by the governing board of
1969 the hospital or nursing home;~~;~~

1970 e. A committee of the Department of Corrections or the
1971 Correctional Medical Authority as created under s. 945.602, or
1972 employees, agents, or consultants of either the department or

Page 68 of 70

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

27-00303B-14

2014654__

1973 the authority or both;~~7~~

1974 f. A committee of a professional service corporation formed
1975 under chapter 621 or a corporation organized under part I of
1976 chapter 607 or chapter 617, which is formed and operated for the
1977 practice of medicine as defined in s. 458.305(3), and which has
1978 at least 25 health care providers who routinely provide health
1979 care services directly to patients;~~7~~

1980 g. A committee of the Department of Children and Families
1981 ~~Family Services~~ which includes employees, agents, or consultants
1982 to the department as deemed necessary to provide peer review,
1983 utilization review, and mortality review of treatment services
1984 provided pursuant to chapters 394, 397, and 916;~~7~~

1985 h. A committee of a mental health treatment facility
1986 licensed under chapter 394 or a community mental health center
1987 as defined in s. 394.907, provided the quality assurance program
1988 operates pursuant to the guidelines that ~~which~~ have been
1989 approved by the governing board of the agency;~~7~~

1990 i. A committee of a substance abuse treatment and education
1991 prevention program licensed under chapter 397 provided the
1992 quality assurance program operates pursuant to the guidelines
1993 that ~~which~~ have been approved by the governing board of the
1994 agency;~~7~~

1995 j. A peer review or utilization review committee organized
1996 under chapter 440;~~7~~

1997 k. A committee of the Department of Health, a county health
1998 department, healthy start coalition, or certified rural health
1999 network, when reviewing quality of care, or employees of these
2000 entities when reviewing mortality records;~~7~~ or

2001 l. A continuous quality improvement committee of a pharmacy

27-00303B-14

2014654__

2002 licensed pursuant to chapter 465,

2003

2004 which committee is formed to evaluate and improve the quality of
2005 health care rendered by providers of health service, to
2006 determine that health services rendered were professionally
2007 indicated or were performed in compliance with the applicable
2008 standard of care, or that the cost of health care rendered was
2009 considered reasonable by the providers of professional health
2010 services in the area; or

2011 2. A committee of an insurer, self-insurer, or joint
2012 underwriting association of medical malpractice insurance, or
2013 other persons conducting review under s. 766.106.

2014 Section 74. Subsection (14) of section 865.09, Florida
2015 Statutes, is amended to read:

2016 865.09 Fictitious name registration.—

2017 (14) PROHIBITION.—A fictitious name registered as provided
2018 in this section may not contain the words "Corporation" or
2019 "Incorporated," or the abbreviations "Corp." or "Inc.," unless
2020 the person or business for which the name is registered is
2021 incorporated or has obtained a certificate of authority to
2022 transact business in this state pursuant to part I of chapter
2023 607 or chapter 617.

2024 Section 75. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Transportation

SENATOR JEFF CLEMENS

27th District

January 28, 2014

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

Chair Detert:

I respectfully request that SB 654 – Business Organizations be added to the agenda for the next Committee on Commerce and Tourism meeting.

Senate Bill 654 will create two new forms of corporate enterprise: Social Purpose Corporations and Benefit Corporations. Each of these enterprises will allow entrepreneurs and investors, through their corporations, to engage in significant societal benefit programs that may not involve or satisfy the traditional corporate norm of profit maximization.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Clemens".

Senator Jeff Clemens
Florida Senate District 27

REPLY TO:

- 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

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 Commerce and Tourism

BILL: SB 726

INTRODUCER: Senator Detert

SUBJECT: Reemployment Assistance Appeals Commission

DATE: February 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	Pre-meeting
2.			GO	

I. Summary:

SB 726 reconfigures the Reemployment Assistance Appeals Commission to expand its membership to nine members and provide regional representation by the appointment of members of Regional Workforce Boards. The commissioners are to be appointed by the Governor, subject to Senate confirmation, and are selected from lists of candidates provided by the President of the Senate and the Speaker of the House of Representatives. Commissioners will serve 2 year terms, except for some initial appointments, which will be for 1 year to allow the appointments to be staggered. The full-time chair of the commission will continue to be selected and appointed by the Governor, subject to Senate confirmation, and serve a 4 year term. Appointments will be made in a manner that prevents any regional workforce board to be represented on the commission more than once in a 6 year period. The bill outlines the criteria for a quorum and contains conflict of interest provisions. The bill also eliminates the \$100 stipend paid to commission members.

II. Present Situation:

Reemployment Assistance

The Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law.¹ The program is administered as a partnership of the federal government and the states.²

¹ United States Department of Labor, Employment and Training Administration, [State Unemployment Insurance Benefits](http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp), available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited Feb. 6, 2014).

² There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

Florida's unemployment insurance program was created by the Legislature in 1937.³ The program was rebranded as the "reemployment assistance program" in 2012.⁴ The Department of Economic Opportunity (DEO) is the current agency responsible for administering Florida's reemployment assistance laws, primarily through its Division for Workforce Services.

An individual must apply to the DEO for benefits. To receive benefits, a claimant must meet certain monetary and non-monetary eligibility requirements.⁵ Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment. A notice of claim is sent to a claimant's most recent employer and all employers whose employment records are liable for benefits.

Determinations and Redeterminations

The DEO issues determinations and redeterminations on the monetary and non-monetary eligibility requirements.⁶ Determinations and redeterminations are statements by the DEO regarding the application of law to an individual's eligibility for benefits or the effect of the benefits on an employer's tax account. A party who believes a determination is inaccurate may request reconsideration and the DEO must review the information on which the request is based and issue a redetermination.

Appeals of DEO Determinations – Office of Appeals

If a party disagrees with either the determination or redetermination, the applicant or employer may request an administrative hearing before an appeals referee. Appeals referees in the DEO's Office of Appeals hold hearings and issue decisions to resolve disputes related to eligibility for unemployment compensation and the payment and collection of unemployment compensation taxes.⁷

Appeals of Appeals Referee Decisions – Reemployment Assistance Appeals Commission

A decision by an appeals referee can be appealed to the Reemployment Assistance Appeals Commission (commission). The commission may affirm, modify, remand with instructions, or reverse the determination made by the appeals referee based on evidence previously submitted in the case or additional evidence taken at the direction of the commission.⁸ However, the commission may also assume jurisdiction of a case prior to completion of proceedings by an appeals referee.⁹

³ Chapter 18402, L.O.F.

⁴ Chapter 2012-30, L.O.F.

⁵ See s. 443.091, F.S.

⁶ Section 443.151(3), F.S. The Social Security Act requires states to offer "an opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied." 42 U.S.C. 503(a)(3).

⁷ Appeals are governed by s. 443.151(4), F.S., and the Administrative Procedures Act, ch. 120, F.S. Special deputies within the Office of Appeals handle appeals related to matters on tax, reimbursement, and liability protests.

⁸ Rule 73B-22, F.A.C. The commission will review the appeals referee's decision to determine whether the findings are supported by competent, substantial evidence in the record and the legal conclusions are in accord with the essential requirements of law.

⁹ Department of Economic Opportunity, *Agency Legislative Bill Analysis*, (Feb. 12, 2014) (on file with the Senate Committee on Commerce and Tourism). The commission does not generally hold oral arguments and has not removed cases from the appeals referees.

Appeals of Commission Decisions – Florida District Courts of Appeal

A party to an appeal who disagrees with the commission's order may seek review of the decision in the Florida district courts of appeal.¹⁰ The notice of appeal should be filed either in the district court of appeal in the appellate district in which a claimant resides or the job separation arose or in the appellate district where the order was issued. If the notice of appeal is filed with the commission, then the appeal will be filed in the district court of appeal in the appellate district where the order was issued.

Reemployment Assistance Appeals Commission

The commission was established in 1977 as the Board of Review.¹¹ The commission is administratively housed within the DEO, but is a quasi-judicial administrative appellate body independent of the DEO.¹² The commission is funded from federal grants that are received by the DEO for the operation of Florida's reemployment assistance program.

The current composition of the commission includes a full-time chairperson and two other members, appointed by the Governor and subject to Senate confirmation. The members serve staggered terms of 4 years each. The chair of the commission is required to have the same qualifications of a circuit judge and is restricted from engaging in any other business or employment. Only one appointee may be a representative of employers and one may be a representative of employees as demonstrated by each member's previous vocation, employment, or affiliation. The chair is paid a salary comparable to that of a circuit judge and the other two members are paid a stipend of \$100 for each day they are engaged in work for the commission.

For FY 2012-2013, the commission received 12,328 appeals and issued 12,542 final or remand orders. If one of the commissioners disagrees with a staff recommendation or otherwise requests discussion of a case, it is docketed for a publicly-noticed deliberation meeting. The commissioners reviewed approximately 9,400 cases that were docketed for the commission and each spent, on average, 1,060 hours reviewing these cases.¹³ Additionally, each commissioner spends an average of 2 hours per week to meet and discuss cases, plus any additional time the commissioner may need to prepare for the meeting. For each case, a commissioner receives a staff summary, the lower level appeal decision, the letter of appeal, legal briefs or other documents filed with the commission, and any exhibits and other evidence reviewed by the DEO appeals referee. Legal staff of the commission is available to provide the commissioners with legal research and analysis for questions that may arise during their independent review of cases or during the public deliberations of the commission.¹⁴

¹⁰ Section 443.151(4)(c), (d), and (e), F.S.

¹¹ Chapter 77-399, L.O.F.

¹² Section 20.60(8), F.S.

¹³ DEO, *Agency Bill Analysis*. To calculate the amount of time spent an average of 10 minutes per case for an "experienced commissioner" is used.

¹⁴ DEO, *Agency Bill Analysis*. Commission meetings are generally held by conference call.

Commissioners are provided case information on a daily basis so that the commission can remain within federally-required timelines.¹⁵ The commission must dispose of 50 percent of cases within 45 days, 80 percent within 75 days, and 95 percent within 150 days. Failure to meet federal performance standards may negatively affect federal funding for the reemployment assistance program. For FY 2012-2013, the commission disposed of 75 percent of its cases within 45 days, 98 percent within 75 days, and 100 percent within 150 days.¹⁶

Regional Workforce Boards

The Workforce Innovation Act of 2000 was passed in an effort to better connect the state's economic development strategies with its workforce development system.¹⁷ The act established a three-tier system for the delivery of workforce services.¹⁸

The DEO is Florida's lead state workforce agency.¹⁹ However, CareerSource Florida²⁰ sets the state's workforce development policy and guidance.²¹ Workforce services in Florida are provided by 24 regional workforce boards (RWB) who deliver services through nearly 100 One-Stop Centers around the state.²²

Each RWB develops a local plan for using federal workforce funds and oversees workforce development activities in the region. The boards also select contractors to operate local One-Stop Career Centers. The One-Stop Career Centers deliver employment services to job seekers and employers. Services include job placement and recruitment assistance as well as funding for skills training.

The service areas of the RWBs generally align with the community college system. Each board is allowed to implement policies based upon the economic development, business, and workforce needs of its particular region of the state.²³

The county or city governing bodies, within an RWB's designated service area, enter into an inter-local agreement to establish the local parameters under which the RWB will operate. This includes the manner in which board members are appointed. Board membership must comply with the requirements outlined in federal workforce law.²⁴ Specifically, the Governor of the state, in partnership with the state board, shall establish criteria for use by chief elected officials in the

¹⁵ DEO, *Agency Bill Analysis*. Timeliness standards are specified in the State Quality Service Plan. This plan serves as the performance document and the grant document through which the state receives administrative funding.

¹⁶ DEO, *Agency Bill Analysis*.

¹⁷ Chapter 2000-165, L.O.F. See bill analysis for SB 2050 and HB 1135 (2000).

¹⁸ See ch. 445, F.S.

¹⁹ Primarily through its Division of Workforce Services.

²⁰ Workforce Florida, Inc., is transitioning to a new unified brand, CareerSource Florida. CareerSource Florida, [Florida Activates New Unified Workforce Brand](http://careersourceflorida.com/wp-content/uploads/2014/01/CareerSourceFloridaLaunchRelease.pdf), available at <http://careersourceflorida.com/wp-content/uploads/2014/01/CareerSourceFloridaLaunchRelease.pdf> (last visited Feb. 12, 2014).

²¹ Workforce Florida, Inc., is Florida's state workforce investment board. See 29 U.S.C. 2821.

²² See <http://careersourceflorida.com/about-careersource-florida> (last visited Feb. 12, 2014).

²³ See s. 445.003, F.S.

²⁴ 29 U.S.C. s. 2832(b). See also Department of Economic Opportunity, Administrative Policy FG-OSPS-73, *Regional Workforce Board Composition, Certification and Decertification* (rev. Sept. 11, 2013), available at <http://www.floridajobs.org/PDG/guidancepapers/DEOGuidancePaperCert073.pdf> (last visited Feb. 14, 2014).

local areas for appointment of members of the local boards. Such criteria shall require, at a minimum, that the membership of each local board shall include the following:

- Representatives of business in the local area, who:
 - Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority;
 - Represent businesses with employment opportunities that reflect the employment opportunities of the local area; and
 - Are appointed from among individuals nominated by local business organizations and business trade associations;
- Representatives of local educational entities, including representatives of local educational agencies, local school boards, entities providing adult education and literacy activities, and postsecondary educational institutions (including representatives of community colleges, where such entities exist), selected from among individuals nominated by regional or local educational agencies, institutions, or organizations representing such local educational entities;
- Representatives of labor organizations (for a local area in which employees are represented by labor organizations), nominated by local labor federations, or (for a local area in which no employees are represented by such organizations), other representatives of employees;
- Representatives of community-based organizations (including organizations representing individuals with disabilities and veterans, for a local area in which such organizations are present);
- Representatives of economic development agencies, including private sector economic development entities;
- Representatives of each of the one-stop partners; and
- Other individuals or representatives of entities as the chief elected official in the local area may determine to be appropriate.

Additionally, state law requires that if a public education or training provider is represented on the board, a representative of a private nonprofit provider and a representative of a private for-profit provider must also be appointed to the board. If the board is located in a region in which there is a military installation, the board must also include one nonvoting military representative.²⁵ The Governor may remove a member of the board for cause.²⁶

III. Effect of Proposed Changes:

Section 1 amends s. 443.012, F.S., to redefine the membership of the Reemployment Assistance Appeals Commission (commission). The bill provides that the terms of the members, except for the chair, currently serving on the commission will expire on September 30, 2014.

²⁵ Section 445.007(1), F.S.

²⁶ “Cause” includes, but is not limited to, engaging in fraud or other criminal acts, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance. See s. 445.007(2)(b), F.S.

Beginning October 1, 2014, the commission will be composed of nine members. The chair will continue to be appointed by the Governor, subject to Senate confirmation, for a term of 4 years. The Governor will appoint eight other commissioners, subject to confirmation by the Senate, for a term of 2 years. Four members of the commission are to be selected from a list of candidates provided by the President of the Senate, which may only include members of the even-numbered regional workforce boards; and four members of the commission are to be selected from a list of candidates provided by the Speaker of the House of Representatives, which may only include members of the odd-numbered regional workforce boards. Each list must contain at least twice the number of candidates as the positions required to be filled.

Only a single member of a regional workforce board may be represented on the commission at any given time. An individual regional workforce board cannot be represented more than once in a 6 year period. *For example:*

Year	Senate recommendations from RWBs	House recommendations from RWBs
2014	2,4,6, and 8*	1,3,5,and 7*
2015	6 and 8	5 and 7
2016	10 and 12	9 and 11
2017	14 and 16	13 and 19
2018	18 and 20	17 and 19
2019	22 and 24	21 and 23

*For the initial appointments, two of the members appointed from the list submitted by the President of the Senate and two of the members appointed from the list submitted by the Speaker will be appointed for a 1 year term in order to stagger the terms of the appointments. These individuals would be eligible to be reappointed for an additional 2 year term. Vacancies for unexpired terms will be filled in the same manner as the original appointment.

Commission members will only be reimbursed for travel expenses and will not receive the \$100 daily stipend currently paid to commission members for each day they are engaged in commission work.

The bill provides that the presence of four members, in addition to the chair, will constitute a quorum. A member may not participate in a case in which he or she is an interested party or may have a conflict of interest.

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:

None.

C. Government Sector Impact:

The DEO estimates the following impacts:²⁷

- There may be significant impact on the commission staff to provide legal and administrative support to nine members instead of three.
- There will be increased travel costs, as the commission meets in person at least 2 times per year. New members will also be required to travel to Tallahassee for training, which commission staff anticipates will last approximately 1 week.
- Additional computers and computer support will be needed for the additional commissioners.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The legislation may impact the commission's ability to meet federal timeliness standards for the reemployment assistance appeals process. With eight new commissioners in the first year and then four new commissioners each year, the rate at which cases can be reviewed may be significantly reduced.²⁸

VIII. Statutes Affected:

This bill substantially amends section 443.012 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.

²⁷ DEO, *Agency Bill Analysis*.

²⁸ DEO, *Agency Bill Analysis*.

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 Detert

28-00857B-14

2014726__

1 A bill to be entitled
 2 An act relating to the Reemployment Assistance Appeals
 3 Commission; amending s. 443.012, F.S.; revising
 4 membership requirements of the commission; removing a
 5 provision requiring payment of a daily stipend for
 6 certain commissioners; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Section 443.012, Florida Statutes, is amended to
 11 read:

12 443.012 Reemployment Assistance Appeals Commission.—
 13 (1) CREATION.—The Reemployment Assistance Appeals
 14 Commission ~~There is created within the Division of Workforce~~
 15 ~~Services of the Department of Economic Opportunity a~~
 16 ~~Reemployment Assistance Appeals Commission. The commission is~~
 17 ~~composed of a chair and two other members appointed by the~~
 18 ~~Governor, subject to confirmation by the Senate. Only one~~
 19 ~~appointee may be a representative of employers, as demonstrated~~
 20 ~~by his or her previous vocation, employment, or affiliation; and~~
 21 ~~only one appointee may be a representative of employees, as~~
 22 ~~demonstrated by his or her previous vocation, employment, or~~
 23 ~~affiliation.~~
 24 (2) MEMBERS.—
 25 (a) Except for the chair, the terms of the members serving
 26 as of July 1, 2014, shall expire on September 30, 2014.
 27 Beginning October 1, 2014, the commission shall be composed of
 28 nine members, consisting of the following:
 29 1. When the term of the chair serving as of July 1, 2014,

Page 1 of 5

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

28-00857B-14

2014726__

30 expires, a chair, who shall be appointed by the Governor,
 31 subject to confirmation by the Senate, for a term of 4 years.
 32 The chair must have the qualifications required by law for a
 33 judge of the circuit court.
 34 2. Eight members appointed by the Governor, subject to
 35 confirmation by the Senate, for a term of 2 years,
 36 notwithstanding s. 20.052(4)(c). Four members shall be appointed
 37 from a list submitted by the President of the Senate which may
 38 include only members of the even-numbered regional workforce
 39 boards under s. 445.007(1). Four members shall be appointed from
 40 a list submitted by the Speaker of the House of Representatives
 41 which may include only members of the odd-numbered regional
 42 workforce boards under s. 445.007(1). Each list must include at
 43 least twice the number of persons as positions required to be
 44 filled. However, to stagger the terms of the initial
 45 appointments, two members appointed from the list submitted by
 46 the President of the Senate and two members appointed from the
 47 list submitted by the Speaker of the House of Representatives
 48 shall be appointed to a term of 1 year and may be reappointed
 49 for an additional term of 2 years.
 50 (b) Only one member may be appointed from an individual
 51 regional workforce board at a time. An individual regional
 52 workforce board may not be represented by an appointee more than
 53 once within a 6-year period.
 54 (c) A vacancy for the unexpired term of a member shall be
 55 filled in the same manner as the original appointment.
 56 (d) ~~(a)~~ The chair:
 57 1. Shall devote his or her entire time to commission duties
 58 and Is responsible for the administrative functions of the

Page 2 of 5

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

28-00857B-14

2014726__

59 commission.

60 ~~2.(b)~~ May The chair has authority to appoint a general
61 counsel and other personnel to carry out the duties and
62 responsibilities of the commission.

63 ~~3.(c)~~ Shall devote his or her entire time to commission
64 duties The chair must have the qualifications required by law
65 ~~for a judge of the circuit court~~ and may not engage in any other
66 business vocation or employment.

67 4. Notwithstanding any other law, ~~the chair~~ shall be paid a
68 salary equal to that paid under state law to a judge of the
69 circuit court.

70 ~~(e)(d)~~ The remaining members shall be paid a stipend of
71 \$100 for each day they are engaged in the work of the
72 ~~commission~~. The chair and other members are entitled to be
73 reimbursed for travel expenses, as provided in s. 112.061.

74 ~~(e)~~ The ~~total~~ salary of the chair and the travel expenses
75 of the chair and other members ~~each member of the commission~~
76 shall be paid from the Employment Security Administration Trust
77 Fund.

78 (3) HEARINGS.-

79 (a) The presence of four members, in addition to the chair,
80 constitutes a quorum of the commission.

81 (b) A member may not take part in a discussion,
82 deliberation, or action on a matter in which he or she is an
83 interested party or has a conflict of interest as defined in s.
84 112.312.

85 ~~(2)~~ The members of the commission shall be appointed to
86 staggered terms of 4 years each. A vacancy for the unexpired
87 term of a member shall be filled in the same manner as the

28-00857B-14

2014726__

88 original appointment. The presence of two members constitutes a
89 quorum for any called meeting of the commission.

90 ~~(4)(3)~~ AUTHORITY, POWERS, AND DUTIES.—The commission has
91 all authority, powers, and duties, ~~and responsibilities~~ relating
92 to reemployment assistance appeal proceedings under this
93 chapter.

94 ~~(a)(4)~~ The property, personnel, and appropriations relating
95 to the specified authority, powers, and duties, ~~and~~
96 ~~responsibilities~~ of the commission shall be provided to the
97 commission by the Department of Economic Opportunity.

98 ~~(5)~~ The commission is not subject to control, supervision,
99 or direction by the Department of Economic Opportunity in
100 performing its powers or duties under this chapter.

101 ~~(b)(6)~~ The commission may do any of the following:

102 1. Make expenditures, including expenditures for personal
103 services and rent, for law books, books of reference,
104 periodicals, furniture, equipment, and supplies, and for
105 printing and binding as necessary in exercising its authority
106 and powers and carrying out its duties and responsibilities. All
107 such expenditures of the commission shall be allowed and paid as
108 provided in s. 443.211 upon the presentation of itemized
109 vouchers approved by the chair.

110 ~~2.(7)~~ The ~~commission may~~ Charge fees for publications,
111 subscriptions, and copies of records and documents. These fees
112 must be deposited into ~~in~~ the Employment Security Administration
113 Trust Fund.

114 3. Adopt rules under ss. 120.536(1) and 120.54 to
115 administer the provisions of law conferring duties upon it.

116 ~~(c)(8)~~ The commission shall do all of the following:

28-00857B-14

2014726__

117 1. Maintain and keep open during reasonable business hours
118 an office in Tallahassee for the purpose of transacting its
119 business, at which office the commission shall keep its official
120 records and papers. The offices shall be furnished and equipped
121 by the commission. The commission may hold sessions and conduct
122 hearings at any place within the state.

123 ~~2.(9) The commission shall~~ Prepare and submit a budget
124 covering the necessary administrative cost of the commission.

125 ~~3.(10) The commission shall~~ Have a seal for authenticating
126 its orders, awards, and proceedings, upon which shall be
127 inscribed the words "State of Florida-Reemployment Assistance
128 Appeals Commission-Seal," and it shall be judicially noticed.

129 ~~(11) The commission has authority to adopt rules under ss.~~
130 ~~120.536(1) and 120.54 to administer the provisions of law~~
131 ~~conferring duties upon it.~~

132 (d) ~~(12)~~ Orders of the commission relating to reemployment
133 assistance under this chapter are subject to review only by
134 notice of appeal to the district courts of appeal in the manner
135 provided in s. 443.151(4)(e).

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

Professional Sports in Florida

Florida currently has 9 major professional sports teams, with an additional team to begin in 2015.

Franchise	Sport	League	Year Founded	Facility	Facility Opened	County
Miami Dolphins	Football	NFL	1966	Sun Life Stadium	1987	Miami-Dade
Tampa Bay Buccaneers	Football	NFL	1976	Raymond James Stadium	1998	Hillsborough
Miami Heat	Basketball	NBA	1988	American Airlines Arena	1999	Miami-Dade
Orlando Magic	Basketball	NBA	1989	Amway Center	2010	Orange
Tampa Bay Lightning	Hockey	NHL	1992	Tampa Bay Times Forum	1996	Hillsborough
Florida Panthers	Hockey	NHL	1993	BB&T Center	1998	Broward
Miami Marlins	Baseball	MLB	1993	Marlins Park	2012	Miami-Dade
Jacksonville Jaguars	Football	NFL	1995	EverBank Field	1995	Duval
Tampa Bay Rays	Baseball	MLB	1998	Tropicana Field	1990, occupied by Rays since 1998	Pinellas
Orlando City SC	Soccer	MLS	2015	2011-2013, 2015 – Citrus Bowl Stadium 2014 – ESPN Wide World of Sports Complex Mid-2015 – Orlando City Stadium	-	Orange

In addition to the nine major professional sports teams, Florida is also home to more than 30 Minor League franchises in various sports and three Arena Football League teams.

Spring Training

MLB's Spring Training Grapefruit League is also based in Florida, with 15 teams claiming the state as their second home for preseason training and exhibition games.

Team	Host Location	Facility Name	Team's Lease Expires ¹
Atlanta Braves	Walt Disney World Resort (Lake Buena Vista)	ESPN Wide World of Sports Complex ²	2017
Baltimore Orioles	Sarasota	Ed Smith Stadium	2039
Boston Red Sox	Fort Myers	JetBlue Park	2042
Detroit Tigers	Lakeland	Joker Marchant Stadium	2016
Houston Astros	Kissimmee	Osceola County Stadium	2016
Miami Marlins	Jupiter	Roger Dean Stadium	2027
Minnesota Twins	Fort Myers	Hammond Stadium	2045
New York Mets	Port St. Lucie	Tradition Field	2023
New York Yankees	Tampa	George M. Steinbrenner Field	2027
Philadelphia Phillies	Clearwater	Bright House Networks Field	2023
Pittsburgh Pirates	Bradenton	McKechnie Field	2037
St. Louis Cardinals	Jupiter	Roger Dean Stadium	2027
Tampa Bay Rays	Port Charlotte	Charlotte Sports Park	2028
Toronto Blue Jays	Dunedin	Florida Auto Exchange Stadium	2016
Washington Nationals	Viera	Space Coast Stadium	2017

Florida's Grapefruit League (league) has been the spring-training home to as many as 20 of the 30 Major League Baseball teams.³

Competition from Arizona

Since the late 1990s, the league has lost several teams to Arizona's Cactus League,⁴ which has a 60-year history of its own with Major League Baseball spring training. Since 1998, the following six teams have left the Grapefruit League for the Cactus League: the Texas Rangers, the Kansas City Royals, the Chicago White Sox, the Los Angeles Dodgers, the Cleveland Indians, and the Cincinnati Reds.

¹ Florida Sports, *Florida Spring Training Stadium Lease Dates*, (on file with the Commerce and Tourism Committee).

² The Braves play at the only privately-owned stadium in the Grapefruit League.

³ More information about the league is available at: <http://www.floridagrapefruitleague.com/>, (last visited on March 11, 2013).

⁴ The Cactus League began in 1947 with two teams, and now has 15 teams.

State Incentives for Professional Sports Teams

Section 288.1162, F.S.

Facilities for new or retained professional sports franchises⁵

- Limit of 8 total certifications
- No more than one certification per facility or per professional sports franchise
- Must be in the National Football League, Major League Baseball, National Hockey League, or National Basketball Association

Purpose:

Paying for the acquisition, construction, reconstruction, or renovation of a facility for a new or retained professional sports franchise (or to pay debt services on bonds issued for these activities).

Applicants:

Local governments, non-profit, and for-profit entities may apply to the program.

Application Process:

The Department of Economic Opportunity (DEO) is responsible for screening and certifying applicants for state funding. The DEO must confirm and verify that:

- A local government is responsible for the construction, management, or operation of the professional sports franchise facility, or holds title to the property where the facility is located;
- The applicant has a verified copy of a signed agreement with a new professional sports franchise for at least 10 years, or for 20 years in the case of a retained franchise;
- The applicant has a verified copy of approval by the governing body of the league authorizing the location;
- The applicant has projections demonstrating a paid annual attendance of more than 300,000 annually;
- The applicant has an independent analysis demonstrating that the amount of sales taxes generated by the use or operation of the facility will generate at least \$2 million annually;
- The local government has certified by resolution after a public hearing that the application serves a public purpose; and
- The applicant has demonstrated that it has provided or is capable of providing financial or other commitments of more than 50% of the costs incurred or related to the improvement or development of the facility.

⁵ A “new professional sports franchise” must be a professional sports franchise that was not based in Florida prior to April 1, 1987. A “retained professional sports franchise” must have had a league-authorized location in the state on or before December 31, 1976, and remained in that location since, and be located at a facility that has not previously been certified under the program.

Funding:

Payments from the state sales tax revenues⁶ by the Department of Revenue (DOR)

Limited to 30 years

Monthly – \$166,667; Annual total – \$2,000,004

Clawback:

The state may only pursue recovery of funds if the Auditor General finds that the distributions were not expended as required by statute.

Certified Professional Sports Facilities:⁷

Professional Sports Facilities – Section 288.1162, F.S.				
\$166,667 monthly for 30 years = \$60 million				
Facility	Certified Entities/ Teams/ Certification Date*	First Payment	Final Payment	Total Payments as of 12/31/2013**
Sun Life Stadium	Joe Robbie Stadium, Inc. (Marlins) May 1993 (Property is owned by the county)	June 1994	June 2023	\$41,000,082.00
Everbank Field	City of Jacksonville (Jaguars) April 1994	June 1994	May 2024	\$39,166,745.00
Tropicana Field	City of St. Petersburg (Rays) May 1995	July 1995	June 2025	\$37,000,074.00
Tampa Bay Times Forum	Tampa Bay Sport Authority (Lightening) July 1995	September 1995	August 2025	\$36,666,740.00
BB&T Center	Broward County (Panthers) June 1996	August 1996	July 2026	\$34,833,403.00
Raymond James Center	Hillsborough County (Bucs) November 1996	January 1997	December 2026	\$34,000,068.00
American Airlines Arena	BPL, LTD (Heat) February 1998 (Property is owned by the city)	March 1998	March 2028	\$31,500,063.00
Amway Center	City of Orlando (Magic) November 2007	February 2008	January 2038	\$11,833,357.00

*-Source: Florida Sports Foundation; **-Provided by the Florida Department of Revenue

⁶ Section 212.20(6)(d)6.b., F.S.

⁷ Data from the DEO.

State Incentives for Spring Training Facilities

Section 288.11621, F.S.

Facilities for MLB spring training teams

- Limit of 10 total certifications
- A local government can only be certified for one spring training franchise at any time

Purpose:

Paying for the acquisition, construction, reconstruction, or renovation of a MLB spring training facility (or to pay debt services on bonds issued for these activities); and assisting in the relocation of a spring training franchise from one local government to another, but only if the governing board of the current host local government agrees to relocation by majority vote. State funds awarded for a facility for a spring training franchise may not be used to subsidize privately owned facilities or facilities used exclusively by a spring training franchise.

Applicants:

Only local governments that levy a tourist development tax under s. 125.0104, F.S., may apply to the program.

Application Process:

The Department of Economic Opportunity (DEO) is responsible for screening and certifying applicants for state funding.

Eligibility Criteria

The DEO must confirm and verify that the local government:

- Is responsible for the acquisition, construction, management, or operation of the facility for a spring training franchise or holds title to the property where the facility is located;
- Has a certified copy of a signed agreement with a spring training franchise for the use of the facility for a term of at least 20 years. The agreement must require the franchise to reimburse the state for state funds expended by the local government if the franchise relocates before the agreement expires;
- Has made a financial commitment to provide 50% or more of the funds required for the acquisition, construction, management, or operation of the spring training franchise facility (such commitment may be contingent upon award of state funds); and
- Demonstrates that the spring training franchise facility will attract an annual paid attendance of at least 50,000 patrons.

Evaluation Criteria

The DEO is directed to competitively evaluate applications for state funding. The DEO must evaluate applicants based on the following criteria, prioritized in descending order of importance:

- The anticipated effect on the local economy where the spring training facility will be located, with priority given to applicants with the largest projected economic impact;

- The amount of local matching funds committed to a facility relative to total state funding sought, with priority to local governments committing larger amounts;
- The potential for the facility to serve multiple uses;
- The intended use of state funds, with priority given to local governments planning to use funds to acquire, construct, or renovate a facility;
- The length of time a local government has been under agreement with a franchise to hold spring training activities within its jurisdiction, with priority given to the longest-standing agreements;
- The length of time a local government's facility has been used by one or more franchises, with priority given to local governments whose facility has been in continuous use for spring training the longest;
- The remaining term on a lease between a local government and a franchise, with priority given to local governments with the shortest lease terms remaining;
- The length of time that a franchise agrees to use a local government's facility if the local government is certified, with priority given to agreements with the longest future use;
- The net increase of total active recreation space owned by the local government after acquisition of land for the facility, with priority given to local governments having the largest percentage increase in total active recreations space available for public use; and
- If the facility is located in a brownfield, enterprise zone, community redevelopment area, or other targeted economic development area or revitalization included in an urban infill redevelopment plan, with priority given to local governments having facilities located in such areas.

Annual Report:

Each local government must submit an annual report to DEO by September 1 with information including evidence that the local government continues to meet eligibility criteria.

Funding:

Payments from the state sales tax revenues⁸ by the Department of Revenue (DOR)

Limited to 30 years

Monthly (*maximum*) – \$41,667; Annual total – \$500,004 (*maximum*)

Contract with DEO:

Applicants certified on or after July 1, 2010, are required to enter into an agreement with DEO.

Clawback:

The state may only pursue recovery of funds if the Auditor General finds that the distributions were not expended as required by statute.

Decertification:

A local government may request decertification, or the DEO can decertify any local government that does not have a valid agreement with a franchise or fails to satisfy its commitment to provide local matching funds. However, a local government *may not* be decertified if the state funds are bonded. If the DEO decertifies a local government, the DEO may accept applications for another certification.

⁸ Section 212.20(6)(d)6.b., F.S.

Certified Spring Training Facilities:⁹

Spring Training – Section 288.11631, F.S.				
Certified Entities/ Teams/ Certification Date*	Monthly Distribution/ # of years/ Total Distribution	First Payment	Final Payment	Total Payments as of 12/31/2013**
City of Clearwater (Phillies) January 2001	\$41,666.66/ 30 years/ \$15 million	February 2001	February 2031	\$6,416,718.00
City of Dunedin (Blue Jays) January 2001	\$41,666.66/ 20 years/ \$10 million	February 2001	February 2023	\$6,416,718.00
Indian River County (Dodgers) January 2001	\$41,666.66/ 30 years/ \$15 million	February 2001	February 2031	\$6,416,718.00
Osceola County (Astros) January 2001	\$41,666.66/ 15 years/ \$7.5 million	February 2001	February 2016	\$6,416,718.00
City of Lakeland (Tigers) January 2001	\$38,888.88/ 15 years/ \$7 million	February 2001	February 2016	\$5,988,906.00
Charlotte County (Rays) December 2006	\$41,666.66/ 30 years/ \$15 million	March 2007	March 2037	\$3,416,694.00
City of Bradenton (Pirates) December 2006	\$41,666.66/ 30 years/ \$15 million	March 2007	March 2037	\$3,416,694.00
City of Sarasota (Orioles) December 2006	\$41,666.66/ 30 years/ \$15 million	March 2007	March 2037	\$3,416,694.00
St. Lucie County (Mets) December 2006	\$41,666.66/ 15 years/ \$7.5 million	March 2007	March 2037	\$1,802,807.72
Lee County (Twins) August 2012	\$41,666.66/ 30 years/ \$15 million	July 2013	June 2043	\$250,002.00

*-Source: Florida Sports Foundation; **-Provided by the Florida Department of Revenue

⁹ Data from the DEO.

Section 288.11631, F.S.

New process to allow local governments to receive additional state funds after July 1, 2016.

Purpose:

Paying for the construction or renovation of a MLB spring training facility (or to pay debt services on bonds issued for these activities). State funds awarded for a facility for a spring training franchise may not be used to subsidize privately owned facilities or facilities used exclusively by a spring training franchise.

Applicants:

Only local governments that levy a tourist development tax under s. 125.0104, F.S., may apply to the program.

Application Process:

The Department of Economic Opportunity (DEO) is responsible for screening and certifying applicants for state funding.

Eligibility Criteria

The DEO must confirm and verify that the local government:

- Is responsible for the construction or renovation of the facility for a spring training franchise or holds title to the property where the facility is located;
- Has a certified copy of a signed agreement with a spring training franchise for the use of the facility for a term of at least 20 years or a term equal to the length of any bonds. The agreement cannot be signed more than 4 years before the expiration of any existing agreement. The agreement must require the franchise to reimburse the state for state funds expended by the local government if the franchise relocates before the agreement expires;
- Has made a financial commitment to provide 50% or more of the funds required for the construction or renovation of the spring training franchise facility (such commitment may be contingent upon award of state funds); and
- Demonstrates that the spring training franchise facility will attract an annual paid attendance of at least 50,000 patrons.

Evaluation Criteria

The DEO is directed to evaluate applications for state funding. The DEO must evaluate applicants based on the following criteria:

- The anticipated effect on the local economy where the spring training facility will be located;
- The amount of local matching funds committed to a facility relative to total state funding sought;
- The potential for the facility to serve multiple uses, year-round;
- The intended use of state funds;
- The length of time a local government has been under agreement with a franchise to hold spring training activities within its jurisdiction;
- The length of time a local government's facility has been used by one or more franchises;
- The remaining term on a lease between a local government and a franchise;

- The length of time that a franchise agrees to use a local government's facility if the local government is certified; and
- If the facility is located in a brownfield, enterprise zone, community redevelopment area, or other targeted economic development area or revitalization included in an urban infill redevelopment plan.

Annual Report:

Each local government must submit an annual report to DEO by September 1 with information including evidence that the local government continues to meet eligibility criteria.

Funding:

Payments from the state sales tax revenues¹⁰ by the Department of Revenue (DOR)

- May not be distributed until July 1, 2016
- Limited to 37 years, 6 months
- For one team (*maximums*):
 - Monthly – \$55,555; Annual total – \$666,660; Lifetime Total – \$20 million
- For two teams: (*maximums*)
 - Monthly – \$111,110; Annual total – \$1,333,320; Lifetime Total – \$50 million

Contract with DEO:

Applicants certified on or after July 1, 2013, are required to enter into an agreement with DEO.

Clawback:

The state may only pursue recovery of funds if the Auditor General finds that the distributions were not expended as required by statute.

Decertification:

A local government may request decertification, or the DEO can decertify any local government that does not have a valid agreement with a franchise or fails to satisfy its commitment to provide local matching funds. However, a local government *may not* be decertified if the state funds are bonded. If the DEO decertifies a local government, the DEO may accept applications for another certification.

¹⁰ Section 212.20(6)(d)6.e., F.S.

Other Sports Incentives

Local Government Half-Cent Sales Tax

Section 218.64, F.S., provides limitations on county and municipal uses of the half-cent sales tax. Subject to ordinances enacted by the county governing authority and by the majority of the members of the governing authorities of municipalities representing at least 50 percent of the municipal population of the county, a county may use up to \$2 million annually to fund a new or retained professional sports facility, a spring training facility, or a motorsports entertainment complex (see below).

Motorsports entertainment complex

Section 288.1171, F.S., allows certification by the DEO for a local government to spend up to \$2 million annually from half-cent sales tax for funding a motorsports entertainment complex

- No more than one certification per facility (*to date, this program has not been used*)

Purpose:

- Paying for the acquisition, construction, reconstruction, or renovation of a facility;
- Paying for construction, reconstruction, expansion, or renovation of transportation or other infrastructure improvements related to, necessary for, or appurtenant to the motorsports entertainment complex; or
- To bond or pay debt service for such purposes; or
- Paying for programs of advertising and promotion if such programs are designed to increase paid attendance at the complex or increase tourism in or promote the economic development of the community where the complex is located.

Applicants:

Only local governments may apply for certification.

Application Process:

The Department of Economic Opportunity (DEO) is responsible for screening and certifying applicants for state funding. The DEO must confirm and verify that the local government:

- Holds title to the property where the facility is located or holds title to the complex; and
- Has certified by resolution after a public hearing that the application serves a public purpose.

Clawback:

The state may only pursue recovery of funds if the DOR finds that the distributions were not expended as required by statute.

Local Government Location Option Tourist Development Taxes

Section 125.0104, F.S., authorizes the levy of five separate local option taxes on rental charges subject to the transient rentals tax, to be used in various ways to promote tourism within the county. Specifically, a county may levy a professional sports franchise facility tax (up to an additional 1 percent) and an additional professional sports franchise facility tax (no greater than 1 percent) if the county already levies the professional sports franchise facility tax to pay for the construction, reconstruction, or renovation of a professional sports franchise facility (or to pay debt services on bonds issued for these activities).

**Professional Golf Hall of Fame
International Game Fish Association World Center**

Other Sports Programs – Sections 288.1168 and 288.1169, F.S. ¹¹	Monthly Distribution/ # of years/ Total Distribution	First Payment	Final Payment	Total Payments as of 12/31/2013*
Professional Golf Hall of Fame	\$166,667/ 25 years/ \$50 million	July 1998	June 2023	\$31,000,062.00
International Game Fish Association (IGFA) World Center	\$83,333/ 14 years/ \$15 million Lump sum payment – \$999,996 (made after certification)	March 2000	February 2014	\$14,833,274.00

*-Source: Florida Sports Foundation; **-Provided by the Florida Department of Revenue

Section 288.1168, F.S.

Professional Golf Hall of Fame

- Limit of 1 certification
- Must be the only pro golf hall of fame in the U.S. recognized by the PGA Tour, Inc.

Purpose:

Paying for the construction, reconstruction, renovation, or operation of a hall of fame facility (or to pay debt services on bonds issued for these activities).

Applicants:

Local government or private sector group if the facility is located on land owned by a local government.

Application Process:

The Department of Economic Opportunity (DEO) is responsible for screening and certifying applicants for state funding. The DEO must confirm and verify that the applicant:

- Has certified by resolution after a public hearing that the application serves a public purpose;
- Has an independent analysis demonstrating that the amount of sales taxes generated by the use or operation of the facility will generate at least \$2 million annually;
- Demonstrates that the facility will attract an annual paid attendance of at least 300,000 patrons;
- Has an agreement with the PGA Tour, Inc., to spend at least \$2 million each year in advertising for the facility, Florida, and Florida tourism; and
- Has demonstrated that it has provided or is capable of providing financial or other commitments of more than 50% of the costs incurred or related to the improvement or development of the facility.

10-Year Recertification:

The DEO is required to recertify the applicant every 10 years.

- If the applicant is not meeting revenue projections, PGA Tour, Inc., must spend an additional \$500,000 on generic Florida advertising.
- If the facility is not open to the public or the only hall of fame recognized by PGA Tour, Inc., the PGA Tour, Inc., must spend the entire \$2.5 million on generic Florida advertising.

¹¹ Data from the DEO.

Funding:

Payments from the state sales tax revenues¹² by the Department of Revenue (DOR)

Limited to 300 months (25 years)

Monthly – \$166,667; Annual total – \$2,000,004; Lifetime Total – \$50,000,100

Section 288.1169, F.S.

International Game Fish Association World Center

- Practical limit of 1 certification – must be the International Game Fish Association (IGFA)
- Must be the only fishing museum, Hall of Fame, and international administrative headquarters in the U.S. recognized by the IGFA

Purpose:

Paying for the construction, reconstruction, renovation, promotion, or operation of the facility (or to pay debt services on bonds issued for these activities).

Applicants:

Local government or private sector group if the facility is located on land owned by a local government.

Application Process:

The Department of Economic Opportunity (DEO) is responsible for screening and certifying applicants for state funding. The DEO must confirm and verify that the applicant:

- Has certified by resolution after a public hearing that the application serves a public purpose;
- Has an independent analysis demonstrating that the amount of sales taxes generated by the use or operation of the facility will generate at least \$1 million annually;
- Demonstrates that the facility will attract an annual attendance of at least 1.8 million patrons, 300,000 of which must be from out-of-state;
- Agrees to spend at least \$500,000 each year in advertising for the facility; and
- Has demonstrated that it has provided or is capable of providing financial or other commitments of more than 50% of the costs incurred or related to the improvement or development of the facility.

10-Year Recertification:

The DEO is required to recertify the applicant every 10 years.

- If the applicant is not meeting revenue projections, the monthly distribution is reduced until revenues increase to the required \$1 million annual amount.

Funding:

Payments from the state sales tax revenues¹³ by the Department of Revenue (DOR)

- Limited to 168 months (14 years)
- Monthly – \$83,333; Annual total – \$1,119,996; Lifetime Total – \$13,999,994
- Lump Sum Payment after certification – \$999,996

Total Potential Funding – \$14,999,940

¹² Section 212.20(6)(d)6.c., F.S.

¹³ Section 212.20(6)(d)6.d., F.S.