

CS/CS/SB 1382 by CA, EE, Latvala; (Compare to CS/CS/CS/1ST ENG/H 0569) Campaign Finance

454416	A	S	RCS	RC, Latvala	Delete L.777 - 783:	04/10 09:57 AM
245104	A	S	RCS	RC, Latvala	Delete L.1223 - 1244:	04/10 09:57 AM
718076	A	S	RCS	RC, Latvala	Delete L.2216:	04/10 09:57 AM
143642	A	S L	RCS	RC, Gardiner	Delete L.1480 - 1497:	04/10 09:57 AM
139494	A	S L	WD	RC, Gardiner	Delete L.528 - 541:	04/10 09:57 AM
386524	A	S L	RCS	RC, Gardiner	Delete L.2526 - 2536.	04/10 09:57 AM

CS/CS/SB 600 by CA, EE, Latvala; (Compare to H 0025) Elections

891828	A	S L	RCS	RC, Latvala	btw L.1198 - 1199:	04/10 08:59 AM
580004	A	S L	RCS	RC, Latvala	Delete L.1073 - 1078:	04/10 08:59 AM

CS/CS/SB 658 by CM, RI, Simpson (CO-INTRODUCERS) Ring, Brandes, Joyner, Hays, Thompson, Richter; (Similar to CS/H 0623) Wine

SB 604 by Bean; (Compare to CS/H 0639) Practitioners

SB 402 by Joyner; (Similar to CS/H 0093) Homelessness

885432	A	S	FAV	TR, Joyner	Delete L.224:	03/08 09:27 AM
--------	---	---	-----	------------	---------------	----------------

SB 832 by Joyner; (Similar to CS/H 0841) Powers of Attorney

CS/SB 1494 by JU, Thrasher; (Similar to CS/CS/H 0935) Florida False Claims Act

298330	A	S		RC, Lee	Delete L.188 - 333:	03/29 04:39 PM
784344	A	S		RC, Lee	Delete L.597:	03/29 04:40 PM

CS/SB 1496 by JU, Thrasher; (Similar to H 0937) Public Records/False Claims Against the State/Department of Legal Affairs

CS/SB 142 by CJ, Altman (CO-INTRODUCERS) Sobel, Bradley; (Identical to H 1119) Intellectual Disabilities

CS/SB 274 by TR, Dean (CO-INTRODUCERS) Evers, Latvala; (Similar to CS/CS/H 0487) Freemasonry License Plates

247518	A	S	RCS	RC, Latvala	Delete L.26:	04/09 06:06 PM
--------	---	---	-----	-------------	--------------	----------------

CS/SB 496 by JU, Dean; (Similar to CS/H 0571) Marshal of the Supreme Court

CS/CS/CS/SB 390 by JU, CJ, MS, Dean; (Compare to CS/H 1077) Veterans' Organizations

CS/SB 1172 by JU, Simmons; (Similar to CS/CS/H 0229) Land Trusts

SB 1090 by Altman; (Identical to H 0683) Motor Vehicles

CS/CS/SB 972 by TR, CA, Hukill; (Similar to CS/CS/CS/H 0319) Transportation Development

CS/SB 544 by **EE, Braynon**; (Similar to H 0593) Exemption from Legislative Lobbying Requirements
293924 A S L RCS RC, Lee btw L.34 - 35: 04/09 05:13 PM

CS/SB 632 by **TR, Soto**; (Similar to H 0265) Florida Wildflower and Florida Salutes Veterans Specialty License Plates

CS/SB 778 by **AG, Thompson (CO-INTRODUCERS) Bullard, Sobel**; (Identical to CS/H 0631) Transactions in Fresh Produce Markets

SB 1066 by **Richter**; (Similar to H 1115) Public Records/Dental Workforce Surveys

CS/SB 102 by **BI, Detert**; (Identical to CS/H 0095) Charitable Contributions

CS/CS/SB 682 by **CA, EP, Simpson**; (Similar to CS/CS/CS/H 0659) Fossil Fuel Combustion Products

SB 1800 by **GO**; (Identical to H 7145) OGSR/Employment Discrimination Complaints

CS/SB 1768 by **GO, TR**; (Similar to H 7107) OGSR/Personal Information/Paratransit Services

SB 1042 by **Abruzzo**; (Similar to CS/H 0361) Public Meetings/Criminal Justice Commissions

CS/SB 714 by **CU, Simmons**; (Similar to CS/H 0649) Public Records/Proprietary Confidential Business Information

CS/SB 474 by **GO, MS**; (Identical to H 7143) OGSR/Department of Veterans' Affairs/Direct-support Organization/Donor Information

SB 376 by **Hays**; (Similar to CS/H 0731) Public Records/Children and Spouses of Law Enforcement Personnel
366616 A S FAV CJ, Dean Delete L.51: 02/19 11:05 AM

SB 712 by **Latvala**; (Identical to H 0911) Fallen Law Enforcement Officers License Plates

CS/SB 904 by **ED, Brandes**; Education
349806 A S L RCS RC, Negron btw L.35 - 36: 04/10 06:17 PM
601806 A S L RCS RC, Negron btw L.187 - 188: 04/10 06:17 PM
758750 A S L RCS RC, Negron btw L.114 - 115: 04/10 06:17 PM

CS/CS/SB 1632 by **AP, TR, Latvala**; (Compare to CS/H 1299) Transportation
961630 A S RCS RC, Latvala btw L.119 - 120: 04/10 09:43 AM
934516 A S RCS RC, Latvala btw L.398 - 399: 04/10 09:43 AM
104756 A S L WD RC, Latvala Delete L.1007 - 1227: 04/10 09:43 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Thrasher, Chair
Senator Smith, Vice Chair

MEETING DATE: Tuesday, April 9, 2013
TIME: 9:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Thrasher, Chair; Senator Smith, Vice Chair; Senators Benacquisto, Diaz de la Portilla, Galvano, Gardiner, Latvala, Lee, Margolis, Montford, Negron, Richter, Ring, Simmons, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Consideration of Motion to Introduce Senate Memorial after Bill Filing Deadline		Not Considered
1	CS/CS/SB 1382 Community Affairs / Ethics and Elections / Latvala (Compare CS/CS/CS/H 569)	Campaign Finance; Repealing provisions relating to the certification and political activities of committees of continuous existence; requiring certain individuals seeking a publicly-elected position on a political party executive committee to file a report with the supervisor of elections before the primary election; requiring the Division of Elections to submit a proposal for a mandatory statewide electronic filing system for certain state and local candidates to the Legislature by a specified date, etc. EE 03/11/2013 Fav/CS CA 03/20/2013 Fav/CS RC 04/02/2013 Not Considered RC 04/09/2013 Fav/CS	Fav/CS Yeas 15 Nays 0
2	CS/CS/SB 600 Community Affairs / Ethics and Elections / Latvala (Compare H 25, H 385, H 397, H 1045, CS/H 7013, H 7021, S 80, S 82, S 388, S 668, S 1198)	Elections; Revising qualifications for late voter registration; providing a limitation on the number of words for certain ballot summaries in joint resolutions proposed by the Legislature; authorizing the Department of State to suspend all sales or leases or use in an election of a defective voting system; revising the number of days and hours for early voting; revising special absentee ballot instructions; revising methods of selecting canvassing board members, etc. EE 03/04/2013 EE 03/18/2013 Fav/CS CA 04/02/2013 Fav/CS RC 04/09/2013 Fav/CS	Fav/CS Yeas 10 Nays 5

COMMITTEE MEETING EXPANDED AGENDA

Rules

Tuesday, April 9, 2013, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/CS/SB 658 Commerce and Tourism / Regulated Industries / Simpson (Similar CS/H 623)	Wine; Providing an exception to the maximum allowable capacity for individual containers of wine sold in this state; providing that, except as provided in s. 564.09, F.S., all wine containers sold or offered for sale at retail for consumption off the premises shall be in the original container, etc. RI 03/07/2013 Fav/CS CM 03/18/2013 Fav/CS RC 04/02/2013 Not Considered RC 04/09/2013 Favorable	Favorable Yeas 15 Nays 0
4	SB 604 Bean (Compare CS/H 639)	Practitioners; Reorganizing provisions relating to license fees for certain practitioners; providing that the Department of Financial Services shall defend certain claims, suits, actions, or proceedings for injunctive, affirmative, or declaratory relief involving emergency interventions on behalf of impaired practitioners; allowing impaired practitioner consultants access to certain confidential information in the prescription drug monitoring program's database when necessary to evaluate or monitor a practitioner as part of a treatment program for impaired practitioners, etc. HP 03/07/2013 Favorable JU 03/18/2013 Favorable RC 04/02/2013 Not Considered RC 04/09/2013 Favorable	Favorable Yeas 14 Nays 0
5	SB 402 Joyner (Similar CS/H 93)	Homelessness; Requiring the motor vehicle registration form and registration renewal form, the driver license application form, and the driver license application form for renewal issuance or renewal extension to include an option to make a voluntary contribution to aid the homeless; providing for such contributions to be deposited into the Grants and Donations Trust Fund of the Department of Children and Families and used by the State Office on Homelessness for certain purposes; establishing a homelessness prevention grant program, etc. CF 02/19/2013 Favorable TR 03/07/2013 Fav/1 Amendment RC 04/02/2013 Not Considered RC 04/09/2013 Fav/CS	Fav/CS Yeas 14 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Tuesday, April 9, 2013, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 832 Joyner (Similar CS/H 841)	Powers of Attorney; Authorizing a notary public to sign the principal's name to the power of attorney under certain circumstances; providing that an original power of attorney, rather than a photocopy or electronic copy, may be required under certain circumstances; providing that an original power of attorney may be presented for recording in the official records for a fee; adding exceptions to a provision that prohibits an agent who has accepted appointment from delegating authority to a third person, etc. JU 03/06/2013 Favorable GO 03/21/2013 Favorable RC 04/02/2013 Not Considered RC 04/09/2013 Favorable	Favorable Yeas 15 Nays 0
7	CS/SB 1494 Judiciary / Thrasher (Similar CS/CS/H 935, Compare H 937, H 1297, Link CS/S 1496)	Florida False Claims Act; Revising conditions under which a person is liable for a specified civil penalty; authorizing the Department of Legal Affairs to issue subpoenas for specified purposes before the institution of civil proceedings; authorizing the department to stipulate to protective orders of submitted documents and information; providing for estoppel as to certain matters following a final judgment or decree rendered in favor of the state or the Federal Government in certain criminal proceedings, etc. JU 03/18/2013 Fav/CS RC 04/02/2013 Not Considered RC 04/09/2013 Not Considered	Not Considered
8	CS/SB 1496 Judiciary / Thrasher (Similar H 937, H 1297, Compare CS/CS/H 935, Link CS/S 1494)	Public Records/False Claims Against the State/Department of Legal Affairs; Providing an exemption from public records requirements for a complaint and other information held by the Department of Legal Affairs pursuant to an investigation of a violation of provisions relating to false claims against the state; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; specifying conditions under which an investigation is considered completed, etc. JU 03/18/2013 Fav/CS GO 04/02/2013 Favorable RC 04/09/2013 Not Considered	Not Considered

COMMITTEE MEETING EXPANDED AGENDA

Rules

Tuesday, April 9, 2013, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	CS/SB 142 Criminal Justice / Altman (Identical H 1119)	Intellectual Disabilities; Substituting the Arc of Florida for the Association for Retarded Citizens for purposes of certain proceedings relating to children; substituting the term "intellectual disability" for the term "mental retardation"; clarifying in specified provisions that the meaning of the terms "intellectual disability" or "intellectually disabled" is the same as the meaning of the terms "mental retardation," "retarded," and "mentally retarded" for purposes of matters relating to the criminal laws and court rules, etc. CF 03/06/2013 Favorable CJ 04/01/2013 Fav/CS RC 04/09/2013 Favorable	Favorable Yeas 15 Nays 0
10	CS/SB 274 Transportation / Dean (Similar CS/CS/H 487)	Freemasonry License Plates; Creating a Freemasonry license plate; establishing an annual use fee for the plate; providing for the distribution of use fees received from the sale of such plates, etc. TR 03/21/2013 Fav/CS RC 04/09/2013 Fav/CS ATD AP	Fav/CS Yeas 13 Nays 0
11	CS/SB 496 Judiciary / Dean (Similar CS/H 571)	Marshal of the Supreme Court; Requiring the marshal and his or her deputies to comply with specified requirements for law enforcement officers; specifying that the marshal and his or her deputies are law enforcement officers with full powers to bear arms and make arrests under certain conditions; limiting the use of those powers to performance of official duties for the Supreme Court, etc. JU 03/12/2013 Fav/CS CJ 04/01/2013 Favorable RC 04/09/2013 Favorable	Favorable Yeas 15 Nays 0
12	CS/CS/CS/SB 390 Judiciary / Criminal Justice / Military and Veterans Affairs, Space, and Domestic Security / Dean (Compare CS/H 1077)	Veterans' Organizations; Prohibiting a business entity from advertising or holding itself out to the public as a veterans' organization or similar entity under certain circumstances; providing that an entity that violates the restrictions on advertizing violates the Florida Deceptive and Unfair Trade Practices Act; prohibiting misrepresentation as a service member or veteran and wearing military or veterans' uniform, medal, or insignia, etc. MS 02/06/2013 Fav/CS CJ 02/19/2013 Fav/CS JU 04/01/2013 Fav/CS RC 04/09/2013 Favorable	Favorable Yeas 15 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Tuesday, April 9, 2013, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	CS/SB 1172 Judiciary / Simmons (Similar CS/CS/H 229)	Land Trusts; Providing requirements relating to vesting of ownership in a trustee; prohibiting the operation of the statute of uses to execute a land trust or to vest the trust property under certain conditions; prohibiting the operation of the doctrine of merger to execute a land trust or to vest the trust property under certain conditions; providing that a trustee's legal and equitable title to the trust property is separate and distinct from the beneficiary's beneficial interest in the land trust and the trust property; revising and providing scope of the Florida Trust Code, etc. JU 03/12/2013 Fav/CS BI 04/02/2013 Favorable RC 04/09/2013 Not Considered	Not Considered
14	SB 1090 Altman (Identical H 683)	Motor Vehicles; Requiring the application forms for motor vehicle registration and renewal of registration and for an original, renewal, or replacement driver license or identification card to include language permitting the applicant to make a voluntary contribution to Auto Club Group Traffic Safety Foundation, Inc.; providing that such contributions are not income for specified purposes; providing for use of funds; providing that the foundation must comply with specified provisions, etc. TR 03/14/2013 Favorable RC 04/09/2013 Favorable AP	Favorable Yeas 14 Nays 0
15	CS/CS/SB 972 Transportation / Community Affairs / Hukill (Similar CS/CS/CS/H 319)	Transportation Development; Providing that local governments that implement transportation concurrency must allow an applicant for a development agreement to satisfy transportation concurrency requirements if certain criteria are met, and must provide the basis upon which landowners will be assessed a proportionate share of the cost of addressing certain transportation impacts; encouraging a local government that repeals transportation concurrency to adopt an alternative mobility funding system that is subject to certain requirements, etc. CA 03/20/2013 Fav/CS TR 04/02/2013 Fav/CS RC 04/09/2013 Favorable	Favorable Yeas 15 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Tuesday, April 9, 2013, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	CS/SB 544 Ethics and Elections / Braynon (Similar H 593, Compare CS/S 1634)	Exemption from Legislative Lobbying Requirements; Revising the term "expenditure" to exclude the use of a public facility or public property that is made available by a governmental entity to a legislator for a public purpose, to exempt such use from legislative lobbying requirements, etc. EE 03/11/2013 Fav/CS GO 04/02/2013 Favorable RC 04/09/2013 Fav/CS	Fav/CS Yeas 14 Nays 1
17	CS/SB 632 Transportation / Soto (Similar H 265, H 699, S 884)	Florida Wildflower and Florida Salutes Veterans Specialty License Plates; Revising the annual use fee for the Florida Wildflower license plate; revising provisions for distribution and use of fees collected from the sale of certain specialty license plates, etc. TR 03/21/2013 Fav/CS RC 04/09/2013 Favorable ATD AP	Favorable Yeas 14 Nays 1
18	CS/SB 778 Agriculture / Thompson (Identical CS/H 631)	Transactions in Fresh Produce Markets; Authorizing certain owners and operators of farmers' markets, community farmers' markets, flea markets, and other open-air markets selling fresh produce to allow authorized Food and Nutrition Service groups, associations, and third-party organizations to operate electronic benefits transfer systems in such markets, etc. AG 03/04/2013 Fav/CS CF 03/18/2013 Favorable AP 03/28/2013 Favorable RC 04/09/2013 Favorable	Favorable Yeas 15 Nays 0
19	SB 1066 Richter (Similar H 1115)	Public Records/Dental Workforce Surveys; Providing an exemption from public records requirements for information contained in dental workforce surveys submitted by dentists or dental hygienists to the Department of Health; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. HP 03/14/2013 Favorable GO 04/02/2013 Favorable RC 04/09/2013 Favorable	Favorable Yeas 15 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Tuesday, April 9, 2013, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
20	CS/SB 102 Banking and Insurance / Detert (Identical CS/H 95)	Charitable Contributions; Defining the terms “charitable contribution” and “qualified religious or charitable entity or organization”; providing that a transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer, etc. BI 03/14/2013 Fav/CS CM 04/01/2013 Favorable RC 04/09/2013 Favorable	Favorable Yeas 14 Nays 1
21	CS/CS/SB 682 Community Affairs / Environmental Preservation and Conservation / Simpson (Similar CS/CS/CS/H 659)	Fossil Fuel Combustion Products; Providing standards for storage of certain fossil fuel combustion products; providing an exemption for beneficial use of fossil fuel combustion products from certain rules; providing that the act does not prohibit the Department of Environmental Protection from taking appropriate action to regulate a beneficial use in certain circumstances; excluding certain types of facilities from provisions on hazardous waste landfills, etc. EP 03/14/2013 EP 03/21/2013 Fav/CS CA 04/02/2013 Fav/CS RC 04/09/2013 Favorable	Favorable Yeas 14 Nays 0
22	SB 1800 Governmental Oversight and Accountability (Identical H 7145)	OGSR/Employment Discrimination Complaints; Amending provisions relating to a public records exemption for agency records concerning complaints of employment discrimination; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption, etc. RC 04/09/2013 Not Considered	Not Considered
23	CS/SB 1768 Governmental Oversight and Accountability / Transportation (Similar H 7107)	OGSR/Personal Information/Paratransit Services; Amending provisions relating to an exemption from public records requirements for personal identifying information of an applicant or recipient of paratransit services; saving the exemption from repeal under the Open Government Sunset Review Act, etc. GO 03/21/2013 Fav/CS RC 04/09/2013 Favorable	Favorable Yeas 14 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Tuesday, April 9, 2013, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
24	SB 1042 Abruzzo (Similar CS/H 361)	Public Meetings/Criminal Justice Commissions; Providing an exemption from public meeting requirements for that portion of a meeting of a duly constituted criminal justice commission at which specified members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may foreseeably come before, the commission; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. CJ 03/11/2013 Favorable GO 04/02/2013 Favorable RC 04/09/2013 Favorable	Favorable Yeas 15 Nays 0
25	CS/SB 714 Communications, Energy, and Public Utilities / Simmons (Similar CS/H 649)	Public Records/Proprietary Confidential Business Information; Providing an exemption from public records requirements for specified proprietary confidential business information held by an electric utility that is subject to ch. 119, F.S., in conjunction with a due diligence review of an electric project or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources; providing for the retention of such information for a specified time; providing for future review and repeal of the exemption, etc. CU 03/06/2013 Fav/CS GO 04/02/2013 Favorable RC 04/09/2013 Not Considered	Not Considered
26	CS/SB 474 Governmental Oversight and Accountability / Military and Veterans Affairs, Space, and Domestic Security (Identical H 7143)	OGSR/Department of Veterans' Affairs/Direct-support Organization/Donor Information; Provides an exemption from public records requirements for any identifying information of a donor or prospective donor to the direct-support organization of the Department of Veterans' Affairs, and an exemption from public meetings requirements for portions of meetings at which the identity of a donor or prospective donor whose identity is confidential and exempt is discussed; saving the exemptions from repeal under the Open Government Sunset Review Act, etc. GO 03/21/2013 Fav/CS RC 04/09/2013 Not Considered	Not Considered

COMMITTEE MEETING EXPANDED AGENDA

Rules

Tuesday, April 9, 2013, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
27	SB 376 Hays (Similar CS/H 731)	Public Records/Children and Spouses of Law Enforcement Personnel; Creating an exemption from public records requirements for the names of the spouses and children of active or former sworn or civilian law enforcement personnel, including children and spouses of correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement, etc. CJ 02/19/2013 Fav/1 Amendment GO 03/21/2013 Favorable RC 04/09/2013 Fav/CS	Fav/CS Yeas 15 Nays 0
28	SB 712 Latvala (Identical H 911)	Fallen Law Enforcement Officers License Plates; Creating a Fallen Law Enforcement Officers license plate; establishing an annual use fee for the plate; providing for the distribution of use fees received from the sale of such plates, etc. TR 03/21/2013 Favorable RC 04/09/2013 Not Considered ATD AP	Not Considered
29	CS/SB 904 Education / Brandes	Education; Creating the Florida Accredited Courses and Tests Initiative (FACTs); defining the term "Florida-accredited course" as it relates to the initiative; providing for application of certain courses and assessments toward promotion, graduation, and degree attainment; requiring that Florida-accredited courses and their assessments be annually identified, approved, published, and shared for consideration by certain students and entities; authorizing a school district, a Florida College System institution, and a state university to contract with qualified contractors to administer and proctor statewide standardized assessments or assessments associated with Florida-accredited courses, etc. ED 03/06/2013 Fav/CS RC 04/09/2013 Fav/CS	Fav/CS Yeas 14 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Rules

Tuesday, April 9, 2013, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
30	CS/CS/SB 1632 Appropriations / Transportation / Latvala (Compare CS/H 1299, H 7127)	Transportation; Authorizing the Department of Transportation to use auction services in the conveyance of certain property or leasehold interests; providing that certain programs approved by the Federal Government relating to the maintenance of highway roadside rights-of-way must be submitted to the Legislature for approval; amending provisions of ch. 479 F.S., relating to outdoor advertising signs; limiting the placement of signs in commercial or industrial zones; providing for notice to owners of intervening privately owned lands before entering upon such lands to remove an illegal sign, etc.	Fav/CS Yeas 14 Nays 0
		TR 03/14/2013 Fav/CS AP 03/28/2013 Not Considered AP 04/03/2013 Fav/CS RC 04/09/2013 Fav/CS	

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/CS/SB 1382

INTRODUCER: Rules Committee, Community Affairs Committee and others

SUBJECT: Campaign Finance

DATE: April 9, 2013

REVISED: 04/10/13

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	Fav/CS
2.	Anderson	Yeatman	CA	Fav/CS
3.	Fox	Phelps	RC	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/CS/SB 1382 is a multipurpose campaign finance bill with the following major provisions:

- Eliminates committees of continuous existence (CCE) and provides for an orderly transition process through de-certification on September 30, 2013; however, the bill retains the \$250 aggregate reporting limit for former CCEs reporting “multiple uniform contributions” (formerly “member dues”) as a political committee (PC).
- Removes the “3-pack” exemption that allows PCs to run political advertisements jointly endorsing 3 or more candidates outside the scope of the contribution limits in Chapter 106.
- Provides for unlimited contributions to PCs supporting/opposing candidates, in lieu of the current \$500/election limit.
- Authorizes *county* political party executive committees to contribute an aggregate of \$50,000 to each *non-statewide* candidate, in addition to the aggregate limit of \$50,000 for *all* other political party contributions.
- Limits political party turn backs from candidate surplus funds to \$25,000.
- Increases the frequency of campaign finance reporting.

- Requires persons seeking a publicly-elected political party executive committee position *who receive contributions or make expenditures* to file a *single* campaign finance report on the Friday immediately preceding the primary election.
- Prohibits candidates who switch races from “double-dipping” contributors for maximum contributions in *both* races.
- Increases the amount certain successful candidates can contribute to an office account, and expands the permissible uses of such funds.
- Allows a successful state candidate to retain up to \$20,000 of campaign funds for reelection.
- Incorporates the PC expenditure ban from CS/SB 2 into Chapter 106, by limiting the permissible type of expenditures and authorizing a personal treble civil penalty for violations.
- Removes the requirement for petition candidates to pay a deferred 1 percent election assessment before disposing of surplus funds, transferring funds to an office account, or rolling over funds for reelection.
- Reinstates sponsorship identification disclaimers for campaign fund raiser tickets and advertising.
- Modifies the titling of campaign depositories and associated checks and debit cards.

This bill creates numbered and unnumbered sections, republishes sections, makes technical and cross-referencing changes to sections, repeals s. 106.04, and substantively amends the following sections of the Florida Statutes: 106.011, 106.021, 106.025, 106.07, 106.0703, 106.08, 106.11, 106.141, 106.29.

II. Present Situation:

The present situation is discussed below in **Effect of Proposed Changes** in this bill analysis.

III. Effect of Proposed Changes:

Elimination of Committees of Continuous Existence (CCEs)

Current Situation

CCEs were created in Florida law in 1973.¹ A CCE is a group, organization, association, or other such entity that is involved in making contributions to candidates, PCs, electioneering communications organizations (ECOs), other CCEs, or political parties.²

A CCE must register with the Division of Elections and provide a copy of its bylaws and membership dues structure. It must report contributions and expenditures on the same schedule as a comparable political committee, though there are some differences in how certain items are reported.³ A CCE is statutorily prohibited from making independent expenditures or electioneering communications, though it may contribute to an electioneering communications organization.

¹ Ch. 73-128, § 6, LAWS OF FLA.

² § 106.04(1), F.S.

³ For example, CCEs are not required to provide a detailed list of members paying dues so long as each member pays no more than \$250 per calendar year; rather, CCEs are only required to report the total amount of dues collected and the total number of dues-paying members. § 106.04(4)(c)1., F.S.

CCEs amass funds through dues collected from a membership base, which, in turn enables a CCE to collect additional contributions without limitation as to individual amount, *provided at least 25 percent of the CCE's overall income is attributable to member dues*. Thus, the more money a CCE receives in member dues the more it can collect in non-member contributions, thereby enhancing its so-called political "clout."

Due to its membership structure, CCEs have historically been the permanent, ongoing campaign finance vehicle of choice for *groups* and *organizations*. In the early to mid 2000s, Florida saw the emergence of "elected officer" CCEs, CCEs created and controlled by *individual* public officials or legislators. Public officers establishing these CCEs have reportedly used funds for a variety of purposes, including funding future legislative leadership battles and, in some of the worst-reported recent cases, wining and dining colleagues on a regular basis or paying for personal expenses of the individual legislator and/or friends, family, and colleagues (sometimes colloquially referred to as "living out of your CCE").

Effect of Proposed Changes (Sections 1-2)

CS/CS/CS/SB 1382 eliminates CCEs, and provides for an orderly transition process.

As of August 1, 2013, CCEs are no longer allowed to accept contributions; on September 30, 2013, all CCE certifications are revoked by operation of law. Before revocation, CCEs must disburse all funds as currently authorized by law. In order to provide sufficient notice to CCEs in advance of revocation, the Division of Elections is required to notify CCEs of the new laws by July 15, 2013. Even though CCE certifications are revoked on September 30, 2013, CCEs must still file required campaign finance reports, including the quarterly report due by October 10 for the third quarter of 2013. PCs or ECOs established, maintained, or controlled by the same person or group as the de-certified CCE that also received funds from the CCE are liable for any ch. 106, F.S., penalty or fine incurred or payable by the defunct CCE after September 30; in the absence of any such organization, the officers of the former CCE are jointly and severally liable.

The following table describes the current law and the effect of the bill's proposed changes:

Committees of Continuous Existence		
	Current Law ⁴	Effect of Proposed Changes
Political Purpose	To make contributions to candidates, political committees, political parties, CCEs, or ECOs. ⁵	This bill eliminates CCEs.
Limits on Contributions to a CCE	There are no limits, <i>provided</i> at least 25 percent of the CCE's income, excluding interest, comes from member dues.	
Limits on Contributions made by a CCE	<ul style="list-style-type: none"> • \$500, to each candidate or political committee supporting <i>candidates</i>.⁶ • Unlimited, for contributions to ECOs, CCEs, or political parties. • Unlimited, for contributions to political committees supporting or opposing ballot <i>issues</i>, <i>provided</i> such contributions aggregate to no more than 25 percent of the CCE's annual income for the prior year.⁷ 	
Permissible and Prohibited Activities	<ul style="list-style-type: none"> • May contribute to candidates, ECOs, CCEs, political committees, and political parties. • May not make direct electioneering communications or independent expenditures. • In order to directly support or oppose an issue, a CCE must register as a political committee. 	

Frequency of Committee Campaign Finance Reports

Present Situation

Pursuant to s. 106.011(16), F.S., individuals running for a political party executive committee position are specifically excluded from the definition of the word “candidate” for Chapter 106 purposes, and as such are not required to file campaign finance reports.

PCs, ECOs, CCEs, and most other candidates are required to file periodic campaign finance reports consisting principally of contributions received and expenditures made. CCEs, however, are not required to provide a detailed list of members paying dues so long as each member pays no more than \$250 in dues per calendar year; rather, CCEs are only required to report the total amount of dues collected and the total number of dues-paying members.⁸

Except for the third calendar quarter immediately preceding a general election, reports must be filed on the 10th day following the end of *each calendar quarter* from the time a campaign treasurer is appointed.⁹ Quarterly reports must include all contributions received and expenditures made during the quarter. In an election year, reports must also be filed every other week on the 32nd, 18th, and 4th days immediately preceding the primary and on the 46th, 32nd, 18th, and 4th days immediately preceding the general election. Any statewide candidate who has requested to receive contributions pursuant to the Florida Election Campaign Financing Act or any statewide candidate in a race with a candidate who has requested to receive contributions must file weekly reports on the 4th, 11th, 18th, 25th, and 32nd days prior to the primary election,

⁴ §106.04, F.S.

⁵ CCE-to-CCE contributions and contributions from CCEs to ECOs are authorized pursuant to s. 106.011(3)(b), F.S., which defines the term “contribution” to include transfers of funds between these entities.

⁶ § 106.08(1), F.S.

⁷ § 106.04(1)(b), F.S.

⁸ § 106.04(4)(c)1., F.S.

⁹ §§ 106.04(4)(b)1.; 106.07(1); 106.0703(1), F.S. Quarterly reports are due on the 10th day after the quarter, unless the 10th day is a Saturday, Sunday, or legal holiday, in which case the report is due on the next business day.

and on the 4th, 11th, 18th, 25th, 32nd, 39th, 46th, and 53rd days prior to the general election. In addition, there are different filing requirements during special elections.

State and county executive committees of a political party and Affiliated Party Committees (APCs) are *only* required to file periodic reports of contributions received and expenditures made on a quarterly basis and on the Friday (4th day) immediately preceding a special primary, primary, special general or general election.¹⁰

Although all final campaign finance reports are due on the Friday (4th day) immediately preceding an election, ECOs and CCEs can raise contributions and spend those contributions right up to and including election day; only candidates,¹¹ political committees,¹² and political parties¹³ are prohibited from obligating or expending contributions raised in the 5 days before an election for *that* upcoming election.¹⁴

Reports are filed either with the Division of Elections or a local filing officer, typically the county Supervisor of Elections, as follows:

- *Candidates*: Reports are filed with the officer before whom the candidate qualifies. Candidates filing reports with the Division of Elections do so through the Electronic Filing System.
- *Political Committees*: Reports are electronically filed with the Division of Elections if the PC supports or opposes statewide, legislative, or multicounty candidates or issues; reports are filed with the county supervisor of elections if the PC supports or opposes solely candidates or issues in a countywide or less than a countywide election, or if a municipality contracts with the supervisor to run the city's elections (common).
- *Committees of Continuous Existence*: Reports are filed electronically with the Division of Elections.
- *Electioneering Communications Organizations*: Reports are electronically filed with the Division of Elections if the ECO's communications involve statewide, legislative, or multicounty candidates; reports are filed with the county supervisor of elections if the ECO's communications involve solely candidates or issues in a countywide or less than a countywide election, or if a municipality contracts with the supervisor to run the city's elections (common).
- *Political Party Executive Committees/APCs*: *State* political party executive committees and APC must file electronically with the Division of Elections; *county* political party executive committees file with the county Supervisor of Elections.

¹⁰ § 106.29(1), F.S.

¹¹ § 106.08(3)(a), F.S.

¹² § 106.08(4), F.S.

¹³ § 106.29(4), F.S.

¹⁴ Candidates are required to return the contribution; political committees and political parties can retain the contribution for use in future elections. §§ 106.08(3)(a), (4); 106.29(4), F.S. *But see, Worley v. Detzner*, No.4:10-cv-00423-RH-CAS, at pp. 14-17 (N.D. Fla., July 2, 2012) (enjoining on First Amendment grounds the statutory prohibition barring a political committee from using contributions received in the last 5 days before an election provided, *before the contribution is spent, the committee fully discloses the contribution in an electronic filing with the Division*).

Reports filed with the Division of Elections are submitted electronically, while reports filed at the local level are typically filed on paper forms.

Effect of Proposed Changes (Sections 9-11, 16)

For statewide candidates and committees that file electronically with the Division of Elections (state political party executive committees and APCs, certain PCs and ECOs), the bill mandates:

- **Monthly** campaign finance reports until the 60th day before the primary (7 days after qualifying ends in June for most non-federal candidates);
- **Weekly** reports beginning on the 60th day before the primary, with the last weekly report due on the 11th day before the general election; and,
- **Daily** reports beginning on the 10th day before the general election, with the last report due on the **4th day before** the general election (last report for ECOs is due on the *day before* the general election).

For non-statewide candidates reporting pursuant to Chapter 106 and local committees (county political party executive committees and PCs/ ECOs that typically file reports with a supervisor of elections), the bill requires:

- **Monthly** campaign finance reports until the 60th day before the primary (7 days after qualifying ends in June for most non-federal candidates); and,
- **Bi-Weekly** reports every other Friday beginning on the 60th day before the primary through the Friday (4th day) before the general election, with an additional report due on the 25th and 11th days before the primary and general election.

For persons seeking a publicly-elected political party executive committee position who receive contributions or make expenditures, the bill requires the filing of a single campaign finance report on the Friday immediately preceding the primary election. The reporting scheme is patterned on local candidate reporting pursuant to s. 106.07, F.S., with the attendant criminal penalties for willfully reporting incorrect, false, or incomplete information as well as administrative fines for late filings.

The bill provides for aggregate reporting by PCs of uniform, multiple contributions from the same person totaling less than \$250 annually that are collected by PC “affiliated sponsors,” mirroring in large measure the current \$250 aggregate reporting exemption for CCE dues. The PC, however, must report the identities of such systematic contributors annually.

Finally, the bill requires the Division of Elections to submit to the Florida Legislature, by December 1, 2013, a proposal for creating a mandatory electronic filing system for *state and local campaign filings* required under the Florida Election Code. **(Section 17)**

Contribution Limits

Present Situation

Candidate and Political Committees

In 1991, the Legislature significantly reduced most of Florida's candidate and political committee contribution limits to the current level: **\$500 per election/\$1,000 per election cycle**,¹⁵ regardless of the office sought.¹⁶ The 1991 Act barred PCs, CCEs, and adult individuals from contributing more than \$500/election to any candidate or to a political committee supporting or opposing candidates; contributions from unemancipated minors under 18 years of age were capped at \$100.¹⁷

Political Party Contributions to Non-Statewide Candidates

Legislative and other non-statewide candidates may accept an aggregate of \$50,000 from all political party sources, including national, state, or county committees, including subordinate committees, and APCs.¹⁸ In addition, political party committees can also provide candidates with unlimited polling services, research services, campaign staff, professional consulting services, and telephone calls (so-called "nonallocables").¹⁹

Effect of Proposed Changes (Section 13)

Candidates and Political Committees

The bill provides for *unlimited* contributions to PCs supporting or opposing candidates instead of the current \$500/election.

Further, the bill removes the constitutionally-suspect \$100 contribution limit applicable to unemancipated minors, thereby allowing the same \$500/election contribution as other individuals.²⁰

Political Party Contributions to Non-Statewide Candidates

CS/CS/CS/SB 1382 allows *county* political party committees to contribute an aggregate of \$50,000 to non-statewide candidates, in addition to the current \$50,000 aggregate which *all* other political party committees may collectively contribute.

¹⁵ A primary election and general election are considered separate elections for purposes of the \$500 contribution limits, unless a candidate is unopposed. § 106.08(1)(c), F.S.

¹⁶ Ch. 91-107, § 11, at 886-87, LAWS OF FLA.

¹⁷ *Id.* In August 2012, a federal district judge in south Florida preliminarily enjoined the Florida Elections Commission from enforcing the \$100 contribution limit on minors, based on a substantial likelihood that it unconstitutionally curtailed First Amendment rights of free speech and association. *Towbin v. Antonacci*, Case No. 12-80069-CV-WILLIAMS (S.D. Fla., Aug 6, 2012).

¹⁸ § 106.08(2)(a), F.S.

¹⁹ § 106.08(2)(b), F.S.

²⁰ See *supra* note 17 and accompanying text (discussing constitutionality of unemancipated minor contribution limit).

Political Committee Depository and Expenditures

Present Situation

Political committees must set-up and make expenditures exclusively from a primary campaign depository.²¹ The depository must be designated specifically as “...(name of the candidate or committee)... Campaign Account.”²² Checks and debit cards for expenditures from the depository must contain the statement “...(name of candidate or political committee)... Campaign Account.”²³

An “expenditure” is defined as a:

[P]urchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value *made for the purpose of influencing the results of an election or making an electioneering communication.*²⁴ (emphasis added)

Effect of Proposed Changes (Section 8, 14)

CS/CS/CS/SB 1382 removes the specific-wording requirements for the titles of campaign depositories along with the words that must appear on checks and debit cards, requiring only the name of the candidate or committee.

The bill further limits political committee expenditures to those that are:

[P]rimarily related to raising or making a contribution, influencing the results of an election, making an electioneering communication, or other political activity authorized by this chapter [106].

Persons making expenditures in violation of this provision are subject to the personal treble civil penalty provided in s. 106.19(2), F.S.

This provision of the bill is similar to the PC/CCE total gift prohibition in CS/SB 2 (Ethics), though it only reaches the person *making* the expenditure on behalf of the CCE.

Race Switching

Present Situation

Florida law provides that any candidate who changes the office that he or she is seeking must offer in writing to return funds received *pro rata* to contributors, and upon request of the contributor must do so; the candidate may use contributions that are not requested to be returned

²¹ §§ 106.021(1), 106.11(1)(a), F.S.

²² § 106.05, F.S.

²³ § 106.11(1)(b)1., (2)(a)2., F.S.

²⁴ § 106.011(4)(a), F.S.

for the newly-designated office.²⁵ A candidate may receive up to \$500 per non-political-party contributor, per election.²⁶

The current statute allows a candidate to “double-dip” certain contributors, collecting the maximum \$500 contribution for the original race, using that contribution (or part thereof) for advertising to get the candidate’s name out, rolling over any *pro rata* amount not requested to be returned, and then tapping the *same* contributor for up to \$1,000 in *additional* contributions (\$500 for the primary, \$500 for the general election) for the newly-designated office — thereby, arguably, circumventing the \$500/election limit in spirit if not in actual practice.

Effect of Proposed Changes (Section 4)

The bill provides that the total amount of the contribution for the original office counts toward the contribution limits for the newly-designated office. For example, if a candidate were to raise \$500 from a contributor for a House seat and subsequently qualify for a contested Senate seat, the \$500 contributed in the House race would port over to the Senate race and allow the candidate to collect only an additional \$500 from *that* contributor for the Senate run (total of \$1,000 for both elections).

Surplus Campaign Funds

Present Situation

Sections 106.11(5) and 106.141, F.S., govern the disposal of surplus campaign funds. Those sections require a candidate to dispose of all funds remaining in his or her campaign account and file a report within 90 days after the candidate is elected or eliminated, becomes unopposed, or withdraws from the election. A candidate may dispose of surplus funds in any of the following ways, or any combination thereof:²⁷

1. Purchase “thank you” advertising for up to 75 days;
2. Pay for items which were obligated before the candidate withdrew, became unopposed, or was eliminated or elected;
3. Make expenditures to close the campaign office and prepare final campaign reports;
4. Return funds on a *pro rata* basis to each contributor;
5. Donate funds to s. 501(c)(3) charitable organizations;
6. Contribute *unlimited* funds to an affiliated party committee or the candidate’s political party (“turn backs”);²⁸
7. For statewide candidates, give funds to the state for use in the Election Campaign Financing Trust Fund or the General Revenue Fund;

²⁵ § 106.021(1)(a), F.S.

²⁶ § 106.08(1), F.S.

²⁷ §§ 106.11(5); 106.141(4)(a), F.S.

²⁸ Political party turn backs from surplus funds were first authorized in 1982; they remained *unlimited* until January 1, 1999, when the Legislature adopted a \$10,000 maximum turn back as part of an omnibus 1997 election reform bill. Ch. 97-13, § 16, LAWS OF FLA.; Ch 82-404, § 1, LAWS OF FLA. In 2004, the limit expanded to \$30,000 *for Senate candidates only*. Ch. 04-252, § 20, LAWS OF FLA. In 2011, the Legislature returned to *unlimited* turn backs for the 2012 election cycle and beyond. Ch. 11-40, § 65, LAWS OF FLA.

8. For candidates for office in a political subdivision, give funds to the political subdivision for deposit in the general fund; or,
9. Transfer funds to an office account (see *infra*, section heading “*Office Accounts*”).²⁹

Florida law does not allow successful candidates to “roll over” campaign funds for reelection from one election to the next.

Prior to making certain dispositions or transferring funds to an office account, any candidate who filed an oath stating that he or she was unable to pay the election assessment³⁰ or fee for verification of petition signatures without imposing an undue burden on his or her personal resources, or who qualified by the petition process and was not required to pay an election assessment, is required to reimburse the state or local governmental entity, whichever is applicable, for the waived assessment or fee or both.³¹

Effect of Proposed Changes (Section 15)

Political Party Turn Backs

CS/CS/CS/SB 1382 limits political party turn backs from surplus campaign funds to \$25,000 per candidate.

“Roll Over” Campaign Funds

In addition to the current methods of disposing of surplus campaign funds, the bill allows a winning candidate for state office to retain up to \$20,000 in the candidate’s campaign account (or transfer it to another interest-bearing account) for use in the candidate’s reelection to the same office,³² *provided* the candidate has paid any outstanding amounts owed for petition signature verification or any unpaid political party assessment.³³ Candidates who do not qualify for reelection to the same office must dispose of the retained funds within 90 days pursuant to the surplus funds’ statutes.

Election Assessment Fee

The bill eliminates the requirement that candidates who are excused from paying an election assessment *at the time of qualifying* because they qualified by petition, or because they claimed a financial hardship, pay back the election assessment before making certain dispositions of

²⁹ Section 106.141(5), F.S., permits a candidate elected to office to transfer surplus campaign funds to an office account (after certain requirements are met), which may be used for “legitimate expenses in connection with the candidate’s public office.” The amount that may be transferred to an office account varies depending upon the office to which the candidate is elected.

³⁰ The election assessment is 1 percent of the annual salary of the office sought. If paid at the time of candidate qualifying, the 1% fee is deposited in the Florida Elections Commission Trust Fund; if paid prior to disposing of surplus funds, the fee is ultimately deposited in the State’s General Revenue Fund. §§ 99.092(1), 106.141(6), F.S.

³¹ § 106.141(6), F.S.

³² To deal with candidates running to represent different districts, and changing district numbers associated with reapportionment, the term “same office” with respect to a *legislative* office means an office in the same legislative *body*, irrespective of district number, designation, or geographic boundary.

³³ These conditions would only impact candidates who qualified by the petition method; candidates paying the qualifying fee would have no preconditions to rolling over funds.

surplus funds, transferring funds to an office account, or, as newly-authorized in the bill, rolling over up to \$20,000 for reelection.

Office Accounts

Present Situation

A successful or unopposed candidate may transfer surplus funds from his or her campaign account to an office account; the maximum amount that can be transferred depends on the elected office (see chart in Effect of Proposed Changes section below, detailing current amounts).³⁴

Office account funds must be separate from any personal or other account, and can only be used for “legitimate expenses in connection with the candidate’s public office.” Some specific examples of such “legitimate expenses” are detailed in the law:

- Travel expenses incurred by the officer or a staff member;
- Personal taxes payable on office account funds by the candidate or elected public official;
- Expenses incurred in the operation of the elected public official’s office, including the employment of additional staff.

Division of Elections Opinion 78-50 offers only minimal guidance as to what activities or expenses are permissible or “legitimate.”³⁵

Provided the activity or responsibility is something which is generated due to and with regard to a person's public position, rather than something personal in nature, expenses associated with that activity or responsibility could be paid with these retained funds.

Effect of Proposed Changes (Section 15)

The following chart summarizes the current law and the bill’s changes with respect to the amount that certain successful candidates can retain in an office account:

³⁴ § 106.141(5), F.S.

³⁵ Given the dearth of specific guidance from the executive and legislative branches, the Senate has developed a list of other permissible office account expenditures. Florida Senate, *Senate Administrative Policies and Procedures* (Dec. 2012) (Senate Policy 2.05, Separate Office Account). The House of Representatives addresses the issue in multiple policies, and handles member questions on an *ad hoc* basis through written decisions of the General Counsel. *See e.g.*, House of Representatives, *Administrative Policy Manual* (November 2012) (Policy Nos. 1.3, 2.3, 2.7, 2.15, 2.19, 3.2, 3.3, 3.7); House Legislative Conduct Opinions 00-02, 02-05, 01-10, 00-02, 97-02, 95-12, *available at*: <http://www.myfloridahouse.gov/FileStores/Adhoc/LegislativeConduct/LegislativeConduct.pdf> (last visited Feb. 20, 2012).

Office Accounts, Maximum Amounts		
Public Officer Candidates	Current Law ³⁶	Effect of Proposed Changes
Statewide Officers ³⁷	\$20,000	\$50,000
Multicounty Office	\$5,000	\$10,000
Legislative	\$5,000, multiplied by the number of years in the term of office for which elected	\$10,000, multiplied by the number of years in the term of office for which elected
County office, or for a candidate in any election conducted on less than a countywide basis	\$2,500, multiplied by the number of years in the term of office for which elected	\$5,000, multiplied by the number of years in the term of office for which elected
Supreme Court Justice	\$6,000	No change.
District Court of Appeal Judge	\$3,000	No change.
Circuit/County Court Judge	\$1,500	\$3,000

Further, the bill expands the statutory list of “legitimate expenses” for which office funds can be used, namely:

- Professional services provided by a certified public accountant or attorney for preparation of an elected public official’s annual financial disclosure filing;³⁸
- Costs associated with holiday cards and constituent newsletters that don’t constitute campaign literature;
- Fees or dues payable to religious, civic, or charitable organizations of which the officer is a member;
- Modestly-priced items such as flowers, greeting cards, or personal notes given in connection with a constituent’s special life event — like the birth of a child, graduation, wedding, or funeral; and,
- Personal expenses incurred by the official in connection with attending a constituent meeting or event where public policy is discussed, *provided* such meetings or events are limited to no more than once a week.

Campaign Fund Raiser Disclaimers

Present Situation

Prior to 2011, two disclaimers were required on fund raiser tickets and advertising:

Any tickets or advertising for such a campaign fund raiser shall contain the following statement: "The purchase of a ticket for, or a contribution to, the campaign fund raiser is a contribution to the campaign of ...(name of the candidate for whose benefit the campaign fund raiser is held)...." Such tickets or advertising shall also comply with other provisions of this chapter relating to political advertising.³⁹

³⁶ §106.141(5), F.S.

³⁷ Governor and Lieutenant Governor considered separate candidates. Section 106.141(5)(a), F.S.

³⁸ This new authorization is tied to provisions in CS/SB 2 (Ethics) by Rules, Ethics and Elections and Senator Latvala, creating a limited “safe harbor” for elected public officers who use a certified public accountant or lawyer to prepare and file their financial disclosure forms.

³⁹ § 106.025(1)(c), F.S. (2010)

Both disclaimers appear to have been inadvertently repealed in 2011, and a provision erroneously added specifically *exempting* campaign fund raiser tickets and advertising from the general political advertisement disclaimer requirements in s. 106.143, F.S.;⁴⁰ there are currently no sponsorship disclaimer requirements for campaign fund raiser materials.

Effect of Proposed Changes (Section 6)

The bill reinstates the requirement that campaign fund raiser tickets and advertising include the general sponsorship disclaimer for political advertisements in s. 106.143, F.S.

Effective Date (Section 37)

Except as otherwise expressly provided, the act takes effect November 1, 2013.

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 increased frequency of campaign finance reporting may result in additional preparation costs for candidates seeking public office and private entities operating as PCs or ECOs, as well as for political party executive committees.

Also, reducing political party turn backs to \$25,000 per candidate will likely force parties to seek those lost funds elsewhere.

⁴⁰ Ch. 2011-40, § 56, LAWS OF FLA.

C. Government Sector Impact:

Revenue

State: Eliminating the current requirement that petition candidates and others pay back the 1 percent election assessment prior to disposing of surplus funds will result in lost revenue to the State's General Revenue Fund. The amount of lost revenue will vary depending primarily on the number of, and offices sought by, candidates that qualify by the petition method.

Expenditures

Department of State: According to the Department of State, under the *first* committee substitute where most candidates and local committees were filing on a more expansive reporting schedule, the increase in the number of campaign finance reports filed with the Division of Elections would have increased their workload, requiring two FTEs and a recurring fiscal impact of \$85,000. The Department asserted that, "[t]he increase in reports would cause an increase in fail to file letters, fine letters, incomplete report letters and Election Commission referrals. All of these documents must be scanned and posted to the web. One entry level FTE would be required to handle incomplete letters and Election Commission referrals. One additional FTE would be required to handle fail to file letters, scanning and posting the letters to the web and to handle the increased traffic on the help desk answering phone calls. In total if you take an average salary of \$30,000 for each FTE plus benefits would total \$85,000."

The current committee substitute reduces the number of reports required of most non-statewide candidates by about 25 percent. It is unclear at this time what impact this reduction will have, if any, on the Department's fiscal analysis.

On another note, the Department intends to produce the report on the feasibility of a statewide database using current resources, so production of the report should not have a fiscal impact on the department.

Florida Elections Commission: According to the Florida Elections Commission (Commission), under the *first* committee substitute where most candidates and local committees were filing on a more expansive reporting schedule, the increase in campaign finance reports filed would have increased the number of cases against candidates, political committees, and electioneering communications organizations that fail to file reports. The Commission also expected the increase in reports would increase the number of cases appealing fines imposed for late filing of reports. According to the Commission, investigating and preparing these cases for presentation to the Commission would have required one additional FTE at a salary of \$33,000, plus benefits for a total cost of \$42,900.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS/CS/CS by Rules on April 9, 2013:

The committee substitute materially differs from the prior committee substitute in that it: eliminates the individual, tiered campaign contribution limits and returns to current law (\$500 per election); makes other technical changes, including correcting a timing glitch with respect to the content of daily campaign finance reports and authorizing the Division of Elections to include the campaign finance surplus and termination reports in its study relating to the development of a statewide electronic campaign finance filing system for local candidates and committees.

CS/CS by Community Affairs on March 20, 2013:

The committee substitute materially differs from the prior committee substitute in that it: removes the contribution/expenditure exemption for PCs running “3-pack” joint endorsement political advertisements; corrects a timing glitch to allow CCEs to transfer unlimited funds to PCs upon the bill becoming law, to allow for transfers of funds during the CCE de-certification transition period; reduces the number of campaign finance reports most candidates, county political party committees, and local PCs/ECOs must file; and, reinstates a Chapter 106 exemption for persons seeking political party executive committee office, while requiring such persons seeking publicly-elected office who raise contributions or make expenditures to file a single report immediately preceding the primary.

CS by Ethics and Elections on March 11, 2013:

The committee substitute materially differs from the original bill in that it: reduces the number of candidates that must file daily campaign finance reports immediately preceding the general election; incorporates the PC expenditure ban in CS/SB 2 into Chapter 106, F.S., by limiting the permissible type of expenditures; modifies the titling of campaign depositories and associated checks and debit cards; authorizes payments to lawyers from office account funds for preparation of financial disclosure forms; removes the requirement for petition candidates to pay back the 1 percent election assessment before disposing of surplus funds; and reinstates political advertising sponsorship disclaimers for campaign fund raiser tickets and advertising.

B. Amendments:

None.

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



454416

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2013	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete lines 777 - 783
and insert:
of mailing in a timely manner. Reports must ~~shall~~ contain
information on ~~of~~ all previously unreported contributions
received and expenditures made as of the preceding Friday,
except that the final weekly or biweekly report ~~filed on the~~
~~Friday~~ immediately preceding the election and each daily report
must ~~shall~~ contain information on ~~of~~ all previously unreported
contributions received and expenditures made as of the day
preceding that designated due date. All such reports are



245104

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2013	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete lines 1223 - 1244

and insert:

(2) (a) Except as provided in s. 106.0705, the reports required of an electioneering communications organization shall be filed with the filing officer not later than 5 p.m. of the day designated. However, any report postmarked by the United States Postal Service no later than midnight of the day designated is ~~shall be~~ deemed to have been filed in a timely manner. Any report received by the filing officer within 5 days after the designated due date that was delivered by the United States Postal Service is ~~shall be~~ deemed timely filed unless it



245104

14 has a postmark that indicates that the report was mailed after
15 the designated due date. A certificate of mailing obtained from
16 and dated by the United States Postal Service at the time of
17 mailing, or a receipt from an established courier company, which
18 bears a date on or before the date on which the report is due,
19 suffices as ~~shall be~~ proof of mailing in a timely manner.
20 Reports must ~~shall~~ contain information on ~~of~~ all previously
21 unreported contributions received and expenditures made as of
22 the preceding Friday, except that the final weekly or biweekly
23 report ~~filed on the Friday~~ immediately preceding the election
24 and each daily report must ~~shall~~ contain information on ~~of~~ all
25 previously unreported contributions received and expenditures
26 made as of the day preceding the designated due date. All such
27 reports are ~~shall be~~ open to public inspection.



718076

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2013	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete line 2216
and insert:
campaign filings required by s. 106.07, s. 106.0703, s. 106.141,
or s.



143642

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2013	.	
	.	
	.	
	.	

The Committee on Rules (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1480 - 1497

and insert:

(1) (a) Except for political parties or affiliated party committees, no person or, political committee, ~~or committee of continuous existence~~ may, in any election, make contributions in excess of \$500 to any candidate for election to or retention in office ~~or to any political committee supporting or opposing one or more candidates~~. Candidates for the offices of Governor and Lieutenant Governor on the same ticket are considered a single candidate for the purpose of this section.



143642

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

15 And the title is amended as follows:

16 Delete lines 67 - 68

17 and insert:

18 the limitations on contributions made to political

19 committees; removing a



139494

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/10/2013	.	
	.	
	.	
	.	

The Committee on Rules (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 528 - 541
and insert:
calculated as of the date the change of designation is filed.
Any contributions not requested to be returned within the 30-day
period may be used by the candidate for the newly designated
office. A ~~No~~ person may not ~~shall~~ accept any

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

And the title is amended as follows:

Delete lines 25 - 28
and insert:



139494

14
15

cross-references; amending s. 106.021, F.S.;
prohibiting a



386524

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2013	.	
	.	
	.	
	.	

The Committee on Rules (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2526 - 2536.

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

And the title is amended as follows:

Delete lines 104 - 107

and insert:

made by the act; reenacting s.

By the Committees on Community Affairs; and Ethics and Elections; and Senator Latvala

578-02814-13

20131382c2

1 A bill to be entitled
 2 An act relating to campaign finance; repealing s.
 3 106.04, F.S., relating to the certification and
 4 political activities of committees of continuous
 5 existence; prohibiting a committee of continuous
 6 existence from accepting a contribution after a
 7 certain date; providing for revocation of the
 8 certification of each committee of continuous
 9 existence on a certain date; requiring the Division of
 10 Elections to provide certain notifications to
 11 committees of continuous existence; providing
 12 procedures for disposition of funds and closing of the
 13 committee account; providing penalties; providing for
 14 the applicability of penalties incurred by the
 15 committee of continuous existence; authorizing a
 16 committee of continuous existence to make unlimited
 17 contributions to a political committee; amending and
 18 reordering s. 106.011, F.S., relating to definitions
 19 applicable to provisions governing campaign financing;
 20 deleting the definition of the term "committee of
 21 continuous existence" to conform to changes made by
 22 the act; revising the definition of the term
 23 "election" to include the selection of members of
 24 political party executive committees; conforming
 25 cross-references; amending s. 106.021, F.S.; providing
 26 requirements and restrictions on the use of
 27 contributions received before a candidate changes his
 28 or her candidacy to a different office; prohibiting a
 29 political committee from making an expenditure for the

Page 1 of 89

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

578-02814-13

20131382c2

30 purpose of jointly endorsing three or more candidates
 31 outside the scope of the requirements of ch. 106,
 32 F.S.; amending s. 106.022, F.S.; conforming a
 33 provision to changes made by the act; amending s.
 34 106.025, F.S.; providing that tickets or advertising
 35 for a campaign fundraiser must comply with the
 36 requirements of political advertisements circulated
 37 before an election; amending s. 106.03, F.S.;
 38 conforming provisions and cross-references to changes
 39 made by the act; amending s. 106.05, F.S.; revising
 40 the information that is required to appear on a bank
 41 account for deposit of funds; reenacting and amending
 42 s. 106.07, F.S., relating to reports by campaign
 43 treasurers; revising reporting requirements for
 44 candidates and political committees; conforming a
 45 cross-reference; creating s. 106.0702, F.S.; requiring
 46 certain individuals seeking a publicly-elected
 47 position on a political party executive committee to
 48 file a report with the supervisor of elections before
 49 the primary election; providing filing and notice
 50 requirements; specifying the contents of the report;
 51 requiring the supervisor to make a specified form
 52 available to a reporting individual; requiring the
 53 reporting individual to certify to the correctness of
 54 the report; providing criminal penalties for a
 55 reporting individual who willfully files an incorrect,
 56 false, or incomplete report; providing for a fine
 57 under specified conditions; authorizing a reporting
 58 individual to appeal a fine to the Florida Elections

Page 2 of 89

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

578-02814-13

20131382c2

59 Commission; requiring the supervisor to notify the
 60 commission of specified violations; amending s.
 61 106.0703, F.S.; revising reporting requirements for
 62 electioneering communications organizations;
 63 reenacting and amending s. 106.0705, F.S., relating to
 64 the electronic filing of campaign treasurer's reports;
 65 conforming provisions and cross-references to changes
 66 made by the act; amending s. 106.08, F.S.; increasing
 67 the limitations on contributions made to certain
 68 candidates and political committees; removing a
 69 limitation on contributions made by specified minors;
 70 revising limitations on contributions to non-statewide
 71 candidates from specified political party committees;
 72 conforming provisions and cross-references to changes
 73 made by the act; reenacting and amending s. 106.11,
 74 F.S.; specifying restrictions on expenditures by
 75 political committees; providing a penalty; revising
 76 the information that is required to appear on bank
 77 account checks of candidates or political committees;
 78 revising information used to determine when debit
 79 cards are considered bank checks; amending s. 106.141,
 80 F.S.; prohibiting a candidate from giving more than a
 81 specified amount of surplus funds to an affiliated
 82 party committee or political party; increasing the
 83 amount of funds that certain candidates may transfer
 84 to an office account; specifying permissible expenses
 85 with office account funds; defining the term "same
 86 office"; modifying requirements and conditions for
 87 disposing of and transferring surplus funds;

Page 3 of 89

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

578-02814-13

20131382c2

88 authorizing certain candidates to retain a specified
 89 amount of funds for reelection to the same office;
 90 establishing requirements and conditions for retained
 91 funds; providing procedures for disposition of
 92 retained funds in certain circumstances; making
 93 changes to conform to the act; reenacting and amending
 94 s. 106.29, F.S.; revising reporting requirements for
 95 political parties and affiliated party committees;
 96 requiring the Division of Elections to submit a
 97 proposal for a mandatory statewide electronic filing
 98 system for certain state and local candidates to the
 99 Legislature by a specified date; amending ss. 101.62,
 100 102.031, 106.087, 106.12, 106.147, 106.17, 106.23,
 101 106.265, 106.27, 106.32, 106.33, 111.075, 112.3148,
 102 112.3149, 1004.28, 1004.70, and 1004.71, F.S.;
 103 conforming provisions and cross-references to changes
 104 made by the act; reenacting s. 106.075(2), F.S.,
 105 relating to contributions made to pay back campaign
 106 loans incurred, to incorporate the amendment made to
 107 s. 106.08, F.S., in a reference thereto; reenacting s.
 108 106.19, F.S., relating to criminal and enhanced civil
 109 penalties for certain campaign finance violations, to
 110 incorporate the amendments made to ss. 106.08 and
 111 106.11, F.S., in references thereto; providing an
 112 effective date.

113
 114 Be It Enacted by the Legislature of the State of Florida:

115
 116 Section 1. Section 106.04, Florida Statutes, is repealed.

Page 4 of 89

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

578-02814-13 20131382c2

117 Section 2. (1) Effective August 1, 2013, a committee of
 118 continuous existence may not accept a contribution as defined in
 119 s. 106.011, Florida Statutes. By July 15, 2013, the Division of
 120 Elections of the Department of State shall notify each committee
 121 of continuous existence of the prohibition on accepting such a
 122 contribution as provided under this subsection.

123 (2) Effective September 30, 2013, the certification of each
 124 committee of continuous existence is revoked and all committee
 125 accounts must have a zero balance. By July 15, 2013, the
 126 Division of Elections of the Department of State shall notify
 127 each committee of continuous existence of the revocation of its
 128 certification pursuant to this subsection. Following the
 129 revocation of certification, each committee of continuous
 130 existence shall file any outstanding report as required by law.

131 (3) (a) A violation of this section or any other provision
 132 of chapter 106 constitutes a violation of chapter 106 regardless
 133 of whether the committee of continuous existence is legally
 134 dissolved.

135 (b) A political committee or electioneering communications
 136 organization that has received funds from a committee of
 137 continuous existence whose certification has been revoked and
 138 that is directly or indirectly established, maintained, or
 139 controlled by the same individual or group as the former
 140 committee of continuous existence, is responsible for any unpaid
 141 fine or penalty incurred by the former committee of continuous
 142 existence. If no such political committee or electioneering
 143 communications organization exists, the principal officers of
 144 the former committee of continuous existence shall be jointly
 145 and severally liable for any fine or penalty.

578-02814-13 20131382c2

146 (4) Notwithstanding any other provision of law, a committee
 147 of continuous existence may make unlimited contributions to a
 148 political committee.

149 (5) This section shall be effective upon this act becoming
 150 a law.

151 Section 3. Section 106.011, Florida Statutes, is reordered
 152 and amended to read:

153 106.011 Definitions.—As used in this chapter, the following
 154 terms have the following meanings unless the context clearly
 155 indicates otherwise:

156 (16) (1) (a) "Political committee" means:

157 1. A combination of two or more individuals, or a person
 158 other than an individual, that, in an aggregate amount in excess
 159 of \$500 during a single calendar year:

160 a. Accepts contributions for the purpose of making
 161 contributions to any candidate, political committee, ~~committee~~
 162 ~~of continuous existence~~, affiliated party committee, or
 163 political party;

164 b. Accepts contributions for the purpose of expressly
 165 advocating the election or defeat of a candidate or the passage
 166 or defeat of an issue;

167 c. Makes expenditures that expressly advocate the election
 168 or defeat of a candidate or the passage or defeat of an issue;
 169 or

170 d. Makes contributions to a common fund, other than a joint
 171 checking account between spouses, from which contributions are
 172 made to any candidate, political committee, ~~committee of~~
 173 ~~continuous existence~~, affiliated party committee, or political
 174 party;

578-02814-13

20131382c2

175 2. The sponsor of a proposed constitutional amendment by
176 initiative who intends to seek the signatures of registered
177 electors.

178 (b) Notwithstanding paragraph (a), the following entities
179 are not considered political committees for purposes of this
180 chapter:

181 1. ~~Organizations which are certified by the Department of~~
182 ~~State as committees of continuous existence pursuant to s.~~
183 ~~106.04,~~ National political parties, the state and county
184 executive committees of political parties, and affiliated party
185 committees regulated by chapter 103.

186 2. Corporations regulated by chapter 607 or chapter 617 or
187 other business entities formed for purposes other than to
188 support or oppose issues or candidates, if their political
189 activities are limited to contributions to candidates, political
190 parties, affiliated party committees, or political committees or
191 expenditures in support of or opposition to an issue from
192 corporate or business funds and if no contributions are received
193 by such corporations or business entities.

194 3. Electioneering communications organizations as defined
195 in subsection (9) ~~(19)~~.

196 ~~(2) "Committee of continuous existence" means any group,~~
197 ~~organization, association, or other such entity which is~~
198 ~~certified pursuant to the provisions of s. 106.04.~~

199 (5) ~~(3)~~ "Contribution" means:

200 (a) A gift, subscription, conveyance, deposit, loan,
201 payment, or distribution of money or anything of value,
202 including contributions in kind having an attributable monetary
203 value in any form, made for the purpose of influencing the

578-02814-13

20131382c2

204 results of an election or making an electioneering
205 communication.

206 (b) A transfer of funds between political committees,
207 ~~between committees of continuous existence,~~ between
208 electioneering communications organizations, or between any
209 combination of these groups.

210 (c) The payment, by a ~~any~~ person other than a candidate or
211 political committee, of compensation for the personal services
212 of another person which are rendered to a candidate or political
213 committee without charge to the candidate or committee for such
214 services.

215 (d) The transfer of funds by a campaign treasurer or deputy
216 campaign treasurer between a primary depository and a separate
217 interest-bearing account or certificate of deposit, and the term
218 includes ~~any~~ interest earned on such account or certificate.

219 Notwithstanding the foregoing meanings of "contribution," the
220 term may not be construed to include services, including, but
221 not limited to, legal and accounting services, provided without
222 compensation by individuals volunteering a portion or all of
223 their time on behalf of a candidate or political committee or
224 editorial endorsements.

225 (10) ~~(4)~~ (a) "Expenditure" means a purchase, payment,
226 distribution, loan, advance, transfer of funds by a campaign
227 treasurer or deputy campaign treasurer between a primary
228 depository and a separate interest-bearing account or
229 certificate of deposit, or gift of money or anything of value
230 made for the purpose of influencing the results of an election
231 or making an electioneering communication. However,
232

578-02814-13

20131382c2

233 "expenditure" does not include a purchase, payment,
 234 distribution, loan, advance, or gift of money or anything of
 235 value made for the purpose of influencing the results of an
 236 election when made by an organization, in existence before ~~prior~~
 237 ~~to~~ the time during which a candidate qualifies or an issue is
 238 placed on the ballot for that election, for the purpose of
 239 printing or distributing such organization's newsletter,
 240 containing a statement by such organization in support of or
 241 opposition to a candidate or issue, which newsletter is
 242 distributed only to members of such organization.

243 (b) As used in this chapter, an "expenditure" for an
 244 electioneering communication is made when the earliest of the
 245 following occurs:

246 1. A person enters into a contract for applicable goods or
 247 services;

248 2. A person makes payment, in whole or in part, for the
 249 production or public dissemination of applicable goods or
 250 services; or

251 3. The electioneering communication is publicly
 252 disseminated.

253 (12)(5) (a) "Independent expenditure" means an expenditure
 254 by a person for the purpose of expressly advocating the election
 255 or defeat of a candidate or the approval or rejection of an
 256 issue, which expenditure is not controlled by, coordinated with,
 257 or made upon consultation with, any candidate, political
 258 committee, or agent of such candidate or committee. An
 259 expenditure for such purpose by a person having a contract with
 260 the candidate, political committee, or agent of such candidate
 261 or committee in a given election period is ~~shall~~ not ~~be deemed~~

578-02814-13

20131382c2

262 an independent expenditure.

263 (b) An expenditure for the purpose of expressly advocating
 264 the election or defeat of a candidate which is made by the
 265 national, state, or county executive committee of a political
 266 party, including any subordinate committee of the political
 267 party, an affiliated party committee, a political committee, ~~a~~
 268 ~~committee of continuous existence~~, or any other person is ~~shall~~
 269 not ~~be~~ considered an independent expenditure if the committee or
 270 person:

271 1. Communicates with the candidate, the candidate's
 272 campaign, or an agent of the candidate acting on behalf of the
 273 candidate, including a a ~~any~~ pollster, media consultant,
 274 advertising agency, vendor, advisor, or staff member, concerning
 275 the preparation of, use of, or payment for, the specific
 276 expenditure or advertising campaign at issue; ~~or~~

277 2. Makes a payment in cooperation, consultation, or concert
 278 with, at the request or suggestion of, or pursuant to a a ~~any~~
 279 general or particular understanding with the candidate, the
 280 candidate's campaign, a political committee supporting the
 281 candidate, or an agent of the candidate relating to the specific
 282 expenditure or advertising campaign at issue; ~~or~~

283 3. Makes a payment for the dissemination, distribution, or
 284 republication, in whole or in part, of a a ~~any~~ broadcast or a a ~~any~~
 285 written, graphic, or other form of campaign material prepared by
 286 the candidate, the candidate's campaign, or an agent of the
 287 candidate, including a a ~~any~~ pollster, media consultant,
 288 advertising agency, vendor, advisor, or staff member; ~~or~~

289 4. Makes a payment based on information about the
 290 candidate's plans, projects, or needs communicated to a member

578-02814-13

20131382c2

291 of the committee or person by the candidate or an agent of the
 292 candidate, provided the committee or person uses the information
 293 in any way, in whole or in part, either directly or indirectly,
 294 to design, prepare, or pay for the specific expenditure or
 295 advertising campaign at issue; ~~or~~

296 5. After the last day of the qualifying period prescribed
 297 for the candidate, consults about the candidate's plans,
 298 projects, or needs in connection with the candidate's pursuit of
 299 election to office and the information is used in any way to
 300 plan, create, design, or prepare an independent expenditure or
 301 advertising campaign, with:

302 a. An ~~Any~~ officer, director, employee, or agent of a
 303 national, state, or county executive committee of a political
 304 party or an affiliated party committee that has made or intends
 305 to make expenditures in connection with or contributions to the
 306 candidate; or

307 b. A ~~Any~~ person whose professional services have been
 308 retained by a national, state, or county executive committee of
 309 a political party or an affiliated party committee that has made
 310 or intends to make expenditures in connection with or
 311 contributions to the candidate; ~~or~~

312 6. After the last day of the qualifying period prescribed
 313 for the candidate, retains the professional services of a ~~any~~
 314 person also providing those services to the candidate in
 315 connection with the candidate's pursuit of election to office;
 316 or

317 7. Arranges, coordinates, or directs the expenditure, in
 318 any way, with the candidate or an agent of the candidate.

319 (7) ~~(6)~~ "Election" means a ~~any~~ primary election, special

578-02814-13

20131382c2

320 primary election, general election, special election, or
 321 municipal election held in this state for the purpose of
 322 nominating or electing candidates to public office, choosing
 323 delegates to the national nominating conventions of political
 324 parties, selecting a member of a political party executive
 325 committee, or submitting an issue to the electors for their
 326 approval or rejection.

327 (13) ~~(7)~~ "Issue" means a ~~any~~ proposition that ~~which~~ is
 328 required by the State Constitution, by law or resolution of the
 329 Legislature, or by the charter, ordinance, or resolution of a
 330 ~~any~~ political subdivision of this state to be submitted to the
 331 electors for their approval or rejection at an election, or a
 332 ~~any~~ proposition for which a petition is circulated in order to
 333 have such proposition placed on the ballot at an ~~any~~ election.

334 (14) ~~(8)~~ "Person" means an individual or a corporation,
 335 association, firm, partnership, joint venture, joint stock
 336 company, club, organization, estate, trust, business trust,
 337 syndicate, or other combination of individuals having collective
 338 capacity. The term includes a political party, affiliated party
 339 committee, or political committee, ~~or committee of continuous~~
 340 ~~existence~~.

341 (2) ~~(9)~~ "Campaign treasurer" means an individual appointed
 342 by a candidate or political committee as provided in this
 343 chapter.

344 (17) ~~(10)~~ "Public office" means a ~~any~~ state, county,
 345 municipal, or school or other district office or position that
 346 ~~which~~ is filled by vote of the electors.

347 (1) ~~(11)~~ "Campaign fund raiser" means an ~~any~~ affair held to
 348 raise funds to be used in a campaign for public office.

578-02814-13

20131382c2

349 ~~(6) (12)~~ "Division" means the Division of Elections of the
350 Department of State.

351 ~~(4) (13)~~ "Communications media" means broadcasting stations,
352 newspapers, magazines, outdoor advertising facilities, printers,
353 direct mail, advertising agencies, the Internet, and telephone
354 companies; but with respect to telephones, an expenditure is
355 ~~shall be~~ deemed to be an expenditure for the use of
356 communications media only if made for the costs of telephones,
357 paid telephonists, or automatic telephone equipment to be used
358 by a candidate or a political committee to communicate with
359 potential voters but excluding the any costs of telephones
360 incurred by a volunteer for use of telephones by such volunteer;
361 however, with respect to the Internet, an expenditure is shall
362 ~~be~~ deemed an expenditure for use of communications media only if
363 made for the cost of creating or disseminating a message on a
364 computer information system accessible by more than one person
365 but excluding internal communications of a campaign or of any
366 group.

367 ~~(11) (14)~~ "Filing officer" means the person before whom a
368 candidate qualifies, or the agency or officer with whom a
369 political committee or an electioneering communications
370 organization registers, ~~or the agency by whom a committee of~~
371 ~~continuous existence is certified.~~

372 ~~(18) (15)~~ "Unopposed candidate" means a candidate for
373 nomination or election to an office who, after the last day on
374 which a any person, including a write-in candidate, may qualify,
375 is without opposition in the election at which the office is to
376 be filled or who is without such opposition after such date as a
377 result of a any primary election or of withdrawal by other

Page 13 of 89

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

578-02814-13

20131382c2

378 candidates seeking the same office. A candidate is not an
379 unopposed candidate if there is a vacancy to be filled under s.
380 100.111(3), if there is a legal proceeding pending regarding the
381 right to a ballot position for the office sought by the
382 candidate, or if the candidate is seeking retention as a justice
383 or judge.

384 ~~(3) (16)~~ "Candidate" means a any person to whom any ~~one or~~
385 ~~more~~ of the following applies apply:

386 (a) A Any person who seeks to qualify for nomination or
387 election by means of the petitioning process.

388 (b) A Any person who seeks to qualify for election as a
389 write-in candidate.

390 (c) A Any person who receives contributions or makes
391 expenditures, or consents for any other person to receive
392 contributions or make expenditures, with a view to bring about
393 his or her nomination or election to, or retention in, public
394 office.

395 (d) A Any person who appoints a treasurer and designates a
396 primary depository.

397 (e) A Any person who files qualification papers and
398 subscribes to a candidate's oath as required by law.

399
400 However, this definition does not include any candidate for a
401 political party executive committee. Expenditures related to
402 potential candidate polls as provided in s. 106.17 are not
403 contributions or expenditures for purposes of this subsection.

404 ~~(15) (17)~~ "Political advertisement" means a paid expression
405 in a any communications media prescribed in subsection ~~(4) (13)~~,
406 whether radio, television, newspaper, magazine, periodical,

Page 14 of 89

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

578-02814-13

20131382c2

407 campaign literature, direct mail, or display or by means other
 408 than the spoken word in direct conversation, which expressly
 409 advocates the election or defeat of a candidate or the approval
 410 or rejection of an issue. However, political advertisement does
 411 not include:

412 (a) A statement by an organization, in existence before
 413 ~~prior to~~ the time during which a candidate qualifies or an issue
 414 is placed on the ballot for that election, in support of or
 415 opposition to a candidate or issue, in that organization's
 416 newsletter, which newsletter is distributed only to the members
 417 of that organization.

418 (b) Editorial endorsements by a any newspaper, a radio or
 419 television station, or any other recognized news medium.

420 ~~(8) (19)~~ (a) "Electioneering communication" means any
 421 communication that is publicly distributed by a television
 422 station, radio station, cable television system, satellite
 423 system, newspaper, magazine, direct mail, or telephone and that:

424 1. Refers to or depicts a clearly identified candidate for
 425 office without expressly advocating the election or defeat of a
 426 candidate but that is susceptible of no reasonable
 427 interpretation other than an appeal to vote for or against a
 428 specific candidate;

429 2. Is made within 30 days before a primary or special
 430 primary election or 60 days before any other election for the
 431 office sought by the candidate; and

432 3. Is targeted to the relevant electorate in the geographic
 433 area the candidate would represent if elected.

434 (b) The term "electioneering communication" does not
 435 include:

578-02814-13

20131382c2

436 1. A communication disseminated through a means of
 437 communication other than a television station, radio station,
 438 cable television system, satellite system, newspaper, magazine,
 439 direct mail, telephone, or statement or depiction by an
 440 organization, in existence before ~~prior to~~ the time during which
 441 a candidate named or depicted qualifies for that election, made
 442 in that organization's newsletter, which newsletter is
 443 distributed only to members of that organization.

444 2. A communication in a news story, commentary, or
 445 editorial distributed through the facilities of a any radio
 446 station, television station, cable television system, or
 447 satellite system, unless the facilities are owned or controlled
 448 by a any political party, political committee, or candidate. A
 449 news story distributed through the facilities owned or
 450 controlled by a any political party, political committee, or
 451 candidate may nevertheless be exempt if it represents a bona
 452 fide news account communicated through a licensed broadcasting
 453 facility and the communication is part of a general pattern of
 454 campaign-related news accounts that give reasonably equal
 455 coverage to all opposing candidates in the area.

456 3. A communication that constitutes a public debate or
 457 forum that includes at least two opposing candidates for an
 458 office or one advocate and one opponent of an issue, or that
 459 solely promotes such a debate or forum and is made by or on
 460 behalf of the person sponsoring the debate or forum, provided
 461 that:

462 a. The staging organization is either:

463 (I) A charitable organization that does not make other
 464 electioneering communications and does not otherwise support or

578-02814-13

20131382c2

465 oppose any political candidate or political party; or

466 (II) A newspaper, radio station, television station, or
467 other recognized news medium; and

468 b. The staging organization does not structure the debate
469 to promote or advance one candidate or issue position over
470 another.

471 (c) For purposes of this chapter, an expenditure made for,
472 or in furtherance of, an electioneering communication is shall
473 ~~not be~~ considered a contribution to or on behalf of any
474 candidate.

475 (d) For purposes of this chapter, an electioneering
476 communication does shall not constitute an independent
477 expenditure and is not ~~nor be~~ subject to the limitations
478 applicable to independent expenditures.

479 (9)(19) "Electioneering communications organization" means
480 any group, other than a political party, affiliated party
481 committee, or political committee, ~~or committee of continuous~~
482 ~~existence~~, whose election-related activities are limited to
483 making expenditures for electioneering communications or
484 accepting contributions for the purpose of making electioneering
485 communications and whose activities would not otherwise require
486 the group to register as a political party, or political
487 committee, ~~or committee of continuous existence~~ under this
488 chapter.

489 Section 4. Paragraph (a) of subsection (1) and paragraph
490 (d) of subsection (3) of section 106.021, Florida Statutes, are
491 amended to read:

492 106.021 Campaign treasurers; deputies; primary and
493 secondary depositories.-

578-02814-13

20131382c2

494 (1) (a) Each candidate for nomination or election to office
495 and each political committee shall appoint a campaign treasurer.
496 Each person who seeks to qualify for nomination or election to,
497 or retention in, office shall appoint a campaign treasurer and
498 designate a primary campaign depository before ~~prior to~~
499 qualifying for office. Any person who seeks to qualify for
500 election or nomination to any office by means of the petitioning
501 process shall appoint a treasurer and designate a primary
502 depository on or before the date he or she obtains the
503 petitions. ~~Each candidate shall~~ At the same time a candidate ~~he~~
504 ~~or she~~ designates a campaign depository and appoints a
505 treasurer, the candidate shall also designate the office for
506 which he or she is a candidate. If the candidate is running for
507 an office that ~~which~~ will be grouped on the ballot with two or
508 more similar offices to be filled at the same election, the
509 candidate must indicate for which group or district office he or
510 she is running. ~~Nothing in~~ This subsection does not shall
511 prohibit a candidate, at a later date, from changing the
512 designation of the office for which he or she is a candidate.
513 However, if a candidate changes the designated office for which
514 he or she is a candidate, the candidate must notify all
515 contributors in writing of the intent to seek a different office
516 and offer to return pro rata, upon their request, those
517 contributions given in support of the original office sought.
518 This notification shall be given within 15 days after the filing
519 of the change of designation and shall include a standard form
520 developed by the Division of Elections for requesting the return
521 of contributions. The notice requirement does shall not apply to
522 any change in a numerical designation resulting solely from

578-02814-13 20131382c2

523 redistricting. If, within 30 days after being notified by the
 524 candidate of the intent to seek a different office, the
 525 contributor notifies the candidate in writing that the
 526 contributor wishes his or her contribution to be returned, the
 527 candidate shall return the contribution, on a pro rata basis,
 528 calculated as of the date the change of designation is filed. Up
 529 to a maximum of the contribution limits specified in s. 106.08,
 530 a candidate who runs for an office other than the office
 531 originally designated may use any contribution that a donor does
 532 not request ~~Any contributions not requested to be returned~~
 533 within the 30-day period for the newly designated office,
 534 provided the candidate disposes of any amount exceeding the
 535 contribution limit pursuant to the options in s. 106.11(5)(b)
 536 and (c) or s. 106.141(4)(a)1., s. 106.141(4)(a)2., or s.
 537 106.141(4)(a)4.; notwithstanding, the full amount of the
 538 contribution for the original office shall count toward the
 539 contribution limits specified in s. 106.08 for the newly
 540 designated office may be used by the candidate for the newly
 541 designated office. ~~A No person may not shall~~ accept any
 542 contribution or make any expenditure with a view to bringing
 543 about his or her nomination, election, or retention in public
 544 office, or authorize another to accept such contributions or
 545 make such expenditure on the person's behalf, unless such person
 546 has appointed a campaign treasurer and designated a primary
 547 campaign depository. A candidate for an office voted upon
 548 statewide may appoint not more than 15 deputy campaign
 549 treasurers, and any other candidate or political committee may
 550 appoint not more than 3 deputy campaign treasurers. The names
 551 and addresses of the campaign treasurer and deputy campaign

578-02814-13 20131382c2

552 treasurers so appointed shall be filed with the officer before
 553 whom such candidate is required to qualify or with whom such
 554 political committee is required to register pursuant to s.
 555 106.03.

556 (3) No contribution or expenditure, including contributions
 557 or expenditures of a candidate or of the candidate's family,
 558 shall be directly or indirectly made or received in furtherance
 559 of the candidacy of any person for nomination or election to
 560 political office in the state or on behalf of any political
 561 committee except through the duly appointed campaign treasurer
 562 of the candidate or political committee, subject to the
 563 following exceptions:

564 (d) Expenditures made directly by any ~~political committee,~~
 565 ~~affiliated party committee,~~ or political party regulated by
 566 chapter 103 for obtaining time, space, or services in or by any
 567 communications medium for the purpose of jointly endorsing three
 568 or more candidates, and any such expenditure ~~may shall~~ not be
 569 considered a contribution or expenditure to or on behalf of any
 570 such candidates for the purposes of this chapter.

571 Section 5. Subsection (1) of section 106.022, Florida
 572 Statutes, is amended to read:

573 106.022 Appointment of a registered agent; duties.—

574 (1) Each political committee, ~~committee of continuous~~
 575 ~~existence,~~ or electioneering communications organization shall
 576 have and continuously maintain in this state a registered office
 577 and a registered agent and must file with the filing officer a
 578 statement of appointment for the registered office and
 579 registered agent. The statement of appointment must:

580 (a) Provide the name of the registered agent and the street

578-02814-13 20131382c2

581 address and phone number for the registered office;

582 (b) Identify the entity for whom the registered agent
583 serves;

584 (c) Designate the address the registered agent wishes to
585 use to receive mail;

586 (d) Include the entity's undertaking to inform the filing
587 officer of any change in such designated address;

588 (e) Provide for the registered agent's acceptance of the
589 appointment, which must confirm that the registered agent is
590 familiar with and accepts the obligations of the position as set
591 forth in this section; and

592 (f) Contain the signature of the registered agent and the
593 entity engaging the registered agent.

594 Section 6. Paragraph (c) of subsection (1) of section
595 106.025, Florida Statutes, is amended to read:

596 106.025 Campaign fund raisers.—

597 (1)

598 (c) Any tickets or advertising for ~~such~~ a campaign fund
599 raiser must comply with ~~is exempt from~~ the requirements of s.
600 106.143.

601 Section 7. Paragraph (b) of subsection (1) and subsection
602 (2) of section 106.03, Florida Statutes, are amended to read:

603 106.03 Registration of political committees and
604 electioneering communications organizations.—

605 (1)

606 (b)1. Each group shall file a statement of organization as
607 an electioneering communications organization within 24 hours
608 after the date on which it makes expenditures for an
609 electioneering communication in excess of \$5,000, if such

578-02814-13 20131382c2

610 expenditures are made within the timeframes specified in s.
611 106.011(8)(a)2. ~~106.011(18)(a)2.~~ If the group makes expenditures
612 for an electioneering communication in excess of \$5,000 before
613 the timeframes specified in s. 106.011(8)(a)2. ~~106.011(18)(a)2.~~,
614 it shall file the statement of organization within 24 hours
615 after the 30th day before a primary or special primary election,
616 or within 24 hours after the 60th day before any other election,
617 whichever is applicable.

618 2.a. In a statewide, legislative, or multicounty election,
619 an electioneering communications organization shall file a
620 statement of organization with the Division of Elections.

621 b. In a countywide election or any election held on less
622 than a countywide basis, except as described in sub-subparagraph
623 c., an electioneering communications organization shall file a
624 statement of organization with the supervisor of elections of
625 the county in which the election is being held.

626 c. In a municipal election, an electioneering
627 communications organization shall file a statement of
628 organization with the officer before whom municipal candidates
629 qualify.

630 d. Any electioneering communications organization that
631 would be required to file a statement of organization in two or
632 more locations need only file a statement of organization with
633 the Division of Elections.

634 (2) The statement of organization shall include:

635 (a) The name, mailing address, and street address of the
636 committee or electioneering communications organization;

637 (b) The names, street addresses, and relationships of
638 affiliated or connected organizations, including any affiliated

578-02814-13

20131382c2

639 sponsors;640 (c) The area, scope, or jurisdiction of the committee or
641 electioneering communications organization;642 (d) The name, mailing address, street address, and position
643 of the custodian of books and accounts;644 (e) The name, mailing address, street address, and position
645 of other principal officers, including the treasurer and deputy
646 treasurer, if any;647 (f) The name, address, office sought, and party affiliation
648 of:

649 1. Each candidate whom the committee is supporting;

650 2. Any other individual, if any, whom the committee is
651 supporting for nomination for election, or election, to any
652 public office whatever;653 (g) Any issue or issues the committee is supporting or
654 opposing;655 (h) If the committee is supporting the entire ticket of any
656 party, a statement to that effect and the name of the party;657 (i) A statement of whether the committee is a continuing
658 one;659 (j) Plans for the disposition of residual funds which will
660 be made in the event of dissolution;661 (k) A listing of all banks, safe-deposit boxes, or other
662 depositories used for committee or electioneering communications
663 organization funds;664 (l) A statement of the reports required to be filed by the
665 committee or the electioneering communications organization with
666 federal officials, if any, and the names, addresses, and
667 positions of such officials; and

578-02814-13

20131382c2

668 (m) A statement of whether the electioneering
669 communications organization was formed as a newly created
670 organization during the current calendar quarter or was formed
671 from an organization existing prior to the current calendar
672 quarter. For purposes of this subsection, calendar quarters end
673 the last day of March, June, September, and December.674 Section 8. Section 106.05, Florida Statutes, is amended to
675 read:676 106.05 Deposit of contributions; statement of campaign
677 treasurer.—All funds received by the campaign treasurer of any
678 candidate or political committee shall, prior to the end of the
679 5th business day following the receipt thereof, Saturdays,
680 Sundays, and legal holidays excluded, be deposited in a campaign
681 depository designated pursuant to s. 106.021, in an account that
682 contains the designated ~~“(name of the candidate or~~
683 ~~committee.)”~~ Campaign Account. Except for contributions to
684 political committees made by payroll deduction, all deposits
685 shall be accompanied by a bank deposit slip containing the name
686 of each contributor and the amount contributed by each. If a
687 contribution is deposited in a secondary campaign depository,
688 the depository shall forward the full amount of the deposit,
689 along with a copy of the deposit slip accompanying the deposit,
690 to the primary campaign depository prior to the end of the 1st
691 business day following the deposit.692 Section 9. Section 106.07, Florida Statutes, is reenacted
693 and amended to read:

694 106.07 Reports; certification and filing.—

695 (1) Each campaign treasurer designated by a candidate or
696 political committee pursuant to s. 106.021 shall file regular

578-02814-13 20131382c2

697 reports of all contributions received, and all expenditures
 698 made, by or on behalf of such candidate or political committee.
 699 ~~Except as provided in paragraphs (a) and (b) for the third~~
 700 ~~calendar quarter immediately preceding a general election,~~
 701 reports shall be filed on the 10th day following the end of each
 702 calendar ~~month quarter~~ from the time the campaign treasurer is
 703 appointed, except that, if the 10th day following the end of a
 704 calendar ~~month quarter~~ occurs on a Saturday, Sunday, or legal
 705 holiday, the report shall be filed on the next following day
 706 ~~that which~~ is not a Saturday, Sunday, or legal holiday. Monthly
 707 Quarterly reports shall include all contributions received and
 708 expenditures made during the calendar ~~month quarter~~ which have
 709 not otherwise been reported pursuant to this section.

710 (a) A statewide candidate or a political committee required
 711 to file reports with the division must file reports:

712 1. On the 60th day immediately preceding the primary
 713 election, and each week thereafter, with the last weekly report
 714 being filed on the 11th day immediately preceding the general
 715 election.

716 2. On the 10th day immediately preceding the general
 717 election, and each day thereafter, with the last daily report
 718 being filed the 4th day before the general election ~~Except as~~
 719 ~~provided in paragraph (b), the reports shall also be filed on~~
 720 ~~the 32nd, 18th, and 4th days immediately preceding the primary~~
 721 ~~and on the 46th, 32nd, 18th, and 4th days immediately preceding~~
 722 ~~the election, for a candidate who is opposed in seeking~~
 723 ~~nomination or election to any office, for a political committee,~~
 724 ~~or for a committee of continuous existence.~~

725 (b) Any other candidate or a political committee required

578-02814-13 20131382c2

726 to file reports with a filing officer other than the division
 727 must file reports on the 60th day immediately preceding the
 728 primary election, and biweekly on each Friday thereafter through
 729 and including the 4th day immediately preceding the general
 730 election, with additional reports due on the 25th and 11th days
 731 before the primary election and the general election ~~Any~~
 732 ~~statewide candidate who has requested to receive contributions~~
 733 ~~pursuant to the Florida Election Campaign Financing Act or any~~
 734 ~~statewide candidate in a race with a candidate who has requested~~
 735 ~~to receive contributions pursuant to the act shall also file~~
 736 ~~reports on the 4th, 11th, 18th, 25th, and 32nd days prior to the~~
 737 ~~primary election, and on the 4th, 11th, 18th, 25th, 32nd, 39th,~~
 738 ~~46th, and 53rd days prior to the general election.~~

739 (c) Following the last day of qualifying for office, any
 740 unopposed candidate need only file a report within 90 days after
 741 the date such candidate became unopposed. Such report shall
 742 contain all previously unreported contributions and expenditures
 743 as required by this section and shall reflect disposition of
 744 funds as required by s. 106.141.

745 (d)1. When a special election is called to fill a vacancy
 746 in office, all political committees making contributions or
 747 expenditures to influence the results of such special election
 748 or the preceding special primary election shall file campaign
 749 treasurers' reports with the filing officer on the dates set by
 750 the Department of State pursuant to s. 100.111.

751 2. When an election is called for an issue to appear on the
 752 ballot at a time when no candidates are scheduled to appear on
 753 the ballot, all political committees making contributions or
 754 expenditures in support of or in opposition to such issue shall

578-02814-13 20131382c2

755 file reports on the 18th and 4th days before ~~prior to~~ such
756 election.

757 (e) The filing officer shall provide each candidate with a
758 schedule designating the beginning and end of reporting periods
759 as well as the corresponding designated due dates.

760 (2) (a) 1. All reports required of a candidate by this
761 section shall be filed with the officer before whom the
762 candidate is required by law to qualify. All candidates who file
763 with the Department of State shall file their reports pursuant
764 to s. 106.0705. Except as provided in s. 106.0705, reports shall
765 be filed not later than 5 p.m. of the day designated; however,
766 any report postmarked by the United States Postal Service no
767 later than midnight of the day designated is ~~shall be~~ deemed to
768 have been filed in a timely manner. Any report received by the
769 filing officer within 5 days after the designated due date that
770 was delivered by the United States Postal Service is ~~shall be~~
771 deemed timely filed unless it has a postmark that indicates that
772 the report was mailed after the designated due date. A
773 certificate of mailing obtained from and dated by the United
774 States Postal Service at the time of mailing, or a receipt from
775 an established courier company, which bears a date on or before
776 the date on which the report is due, suffices as ~~shall be~~ proof
777 of mailing in a timely manner. Reports must ~~shall~~ contain
778 information on ~~of~~ all previously unreported contributions
779 received and expenditures made as of the preceding Friday,
780 except that the report filed on the Friday immediately preceding
781 the election must ~~shall~~ contain information on ~~of~~ all previously
782 unreported contributions received and expenditures made as of
783 the day preceding that designated due date. All such reports are are

Page 27 of 89

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

578-02814-13 20131382c2

784 ~~shall be~~ open to public inspection.

785 2. This subsection does not prohibit the governing body of
786 a political subdivision, by ordinance or resolution, from
787 imposing upon its own officers and candidates electronic filing
788 requirements not in conflict with s. 106.0705. Expenditure of
789 public funds for such purpose is deemed to be for a valid public
790 purpose.

791 (b) 1. Any report that is deemed to be incomplete by the
792 officer with whom the candidate qualifies must ~~shall~~ be accepted
793 on a conditional basis. The campaign treasurer shall be notified
794 by certified mail or by another method using a common carrier
795 that provides a proof of delivery of the notice as to why the
796 report is incomplete and within 7 days after receipt of such
797 notice must file an addendum to the report providing all
798 information necessary to complete the report in compliance with
799 this section. Failure to file a complete report after such
800 notice constitutes a violation of this chapter.

801 2. Notice is deemed complete upon proof of delivery of a
802 written notice to the mailing or street address of the campaign
803 treasurer or registered agent of record with the filing officer.

804 (3) Reports required of a political committee shall be
805 filed with the agency or officer before whom such committee
806 registers pursuant to s. 106.03(3) and shall be subject to the
807 same filing conditions as established for candidates' reports.
808 Incomplete reports by political committees shall be treated in
809 the manner provided for incomplete reports by candidates in
810 subsection (2).

811 (4) (a) Except as provided in paragraph (b), each report
812 required by this section must contain:

Page 28 of 89

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

578-02814-13

20131382c2

- 813 1. The full name, address, and occupation, if any of each
 814 person who has made one or more contributions to or for such
 815 committee or candidate within the reporting period, together
 816 with the amount and date of such contributions. For
 817 corporations, the report must provide as clear a description as
 818 practicable of the principal type of business conducted by the
 819 corporation. However, if the contribution is \$100 or less or is
 820 from a relative, as defined in s. 112.312, provided that the
 821 relationship is reported, the occupation of the contributor or
 822 the principal type of business need not be listed.
- 823 2. The name and address of each political committee from
 824 which the reporting committee or the candidate received, or to
 825 which the reporting committee or candidate made, any transfer of
 826 funds, together with the amounts and dates of all transfers.
- 827 3. Each loan for campaign purposes to or from any person or
 828 political committee within the reporting period, together with
 829 the full names, addresses, and occupations, and principal places
 830 of business, if any, of the lender and endorsers, if any, and
 831 the date and amount of such loans.
- 832 4. A statement of each contribution, rebate, refund, or
 833 other receipt not otherwise listed under subparagraphs 1.
 834 through 3.
- 835 5. The total sums of all loans, in-kind contributions, and
 836 other receipts by or for such committee or candidate during the
 837 reporting period. The reporting forms shall be designed to
 838 elicit separate totals for in-kind contributions, loans, and
 839 other receipts.
- 840 6. The full name and address of each person to whom
 841 expenditures have been made by or on behalf of the committee or

Page 29 of 89

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

578-02814-13

20131382c2

- 842 candidate within the reporting period; the amount, date, and
 843 purpose of each such expenditure; and the name and address of,
 844 and office sought by, each candidate on whose behalf such
 845 expenditure was made. However, expenditures made from the petty
 846 cash fund provided by s. 106.12 need not be reported
 847 individually.
- 848 7. The full name and address of each person to whom an
 849 expenditure for personal services, salary, or reimbursement for
 850 authorized expenses as provided in s. 106.021(3) has been made
 851 and which is not otherwise reported, including the amount, date,
 852 and purpose of such expenditure. However, expenditures made from
 853 the petty cash fund provided for in s. 106.12 need not be
 854 reported individually. Receipts for reimbursement for authorized
 855 expenditures shall be retained by the treasurer along with the
 856 records for the campaign account.
- 857 8. The total amount withdrawn and the total amount spent
 858 for petty cash purposes pursuant to this chapter during the
 859 reporting period.
- 860 9. The total sum of expenditures made by such committee or
 861 candidate during the reporting period.
- 862 10. The amount and nature of debts and obligations owed by
 863 or to the committee or candidate, which relate to the conduct of
 864 any political campaign.
- 865 11. Transaction information for each credit card purchase.
 866 Receipts for each credit card purchase shall be retained by the
 867 treasurer with the records for the campaign account.
- 868 12. The amount and nature of any separate interest-bearing
 869 accounts or certificates of deposit and identification of the
 870 financial institution in which such accounts or certificates of

Page 30 of 89

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

578-02814-13 20131382c2

871 deposit are located.

872 13. The primary purposes of an expenditure made indirectly
873 through a campaign treasurer pursuant to s. 106.021(3) for goods
874 and services such as communications media placement or
875 procurement services, campaign signs, insurance, and other
876 expenditures that include multiple components as part of the
877 expenditure. The primary purpose of an expenditure shall be that
878 purpose, including integral and directly related components,
879 that comprises 80 percent of such expenditure.

880 (b) Multiple uniform contributions from the same person,
881 aggregating no more than \$250 per calendar year, collected by an
882 organization that is the affiliated sponsor of a political
883 committee, may be reported by the political committee in an
884 aggregate amount listing the number of contributors together
885 with the amount contributed by each and the total amount
886 contributed during the reporting period. The identity of each
887 person making such uniform contribution must be reported to the
888 filing officer as provided in subparagraph (a)1. by July 1 of
889 each calendar year, or, in a general election year, no later
890 than the 60th day immediately preceding the primary election.

891 (c) ~~(b)~~ The filing officer shall make available to any
892 candidate or committee a reporting form which the candidate or
893 committee may use to indicate contributions received by the
894 candidate or committee but returned to the contributor before
895 deposit.

896 (5) The candidate and his or her campaign treasurer, in the
897 case of a candidate, or the political committee chair and
898 campaign treasurer of the committee, in the case of a political
899 committee, shall certify as to the correctness of each report;

578-02814-13 20131382c2

900 and each person so certifying shall bear the responsibility for
901 the accuracy and veracity of each report. Any campaign
902 treasurer, candidate, or political committee chair who willfully
903 certifies the correctness of any report while knowing that such
904 report is incorrect, false, or incomplete commits a misdemeanor
905 of the first degree, punishable as provided in s. 775.082 or s.
906 775.083.

907 (6) The records maintained by the campaign depository with
908 respect to any campaign account regulated by this chapter are
909 subject to inspection by an agent of the Division of Elections
910 or the Florida Elections Commission at any time during normal
911 banking hours, and such depository shall furnish certified
912 copies of any of such records to the Division of Elections or
913 Florida Elections Commission upon request.

914 (7) Notwithstanding any other provisions of this chapter,
915 in any reporting period during which a candidate ~~or~~ political
916 committee, ~~or committee of continuous existence~~ has not received
917 funds, made any contributions, or expended any reportable funds,
918 the filing of the required report for that period is waived.
919 However, the next report filed must specify that the report
920 covers the entire period between the last submitted report and
921 the report being filed, and any candidate ~~or~~ political
922 committee, ~~or committee of continuous existence~~ not reporting by
923 virtue of this subsection on dates prescribed elsewhere in this
924 chapter shall notify the filing officer in writing on the
925 prescribed reporting date that no report is being filed on that
926 date.

927 (8) (a) Any candidate or political committee failing to file
928 a report on the designated due date is subject to a fine as

578-02814-13 20131382c2

929 provided in paragraph (b) for each late day, and, in the case of
 930 a candidate, such fine shall be paid only from personal funds of
 931 the candidate. The fine shall be assessed by the filing officer
 932 and the moneys collected shall be deposited:

933 1. In the General Revenue Fund, in the case of a candidate
 934 for state office or a political committee that registers with
 935 the Division of Elections; or

936 2. In the general revenue fund of the political
 937 subdivision, in the case of a candidate for an office of a
 938 political subdivision or a political committee that registers
 939 with an officer of a political subdivision.

940
 941 No separate fine shall be assessed for failure to file a copy of
 942 any report required by this section.

943 (b) Upon determining that a report is late, the filing
 944 officer shall immediately notify the candidate or chair of the
 945 political committee as to the failure to file a report by the
 946 designated due date and that a fine is being assessed for each
 947 late day. The fine ~~is shall be~~ \$50 per day for the first 3 days
 948 late and, thereafter, \$500 per day for each late day, not to
 949 exceed 25 percent of the total receipts or expenditures,
 950 whichever is greater, for the period covered by the late report.
 951 However, for the reports immediately preceding each special
 952 primary election, special election, primary election, and
 953 general election, the fine ~~is shall be~~ \$500 per day for each
 954 late day, not to exceed 25 percent of the total receipts or
 955 expenditures, whichever is greater, for the period covered by
 956 the late report. For reports required under s. 106.141(8)
 957 ~~106.141(7)~~, the fine is \$50 per day for each late day, not to

578-02814-13 20131382c2

958 exceed 25 percent of the total receipts or expenditures,
 959 whichever is greater, for the period covered by the late report.

960 Upon receipt of the report, the filing officer shall determine
 961 the amount of the fine which is due and shall notify the
 962 candidate or chair or registered agent of the political
 963 committee. The filing officer shall determine the amount of the
 964 fine due based upon the earliest of the following:

965 1. When the report is actually received by such officer.

966 2. When the report is postmarked.

967 3. When the certificate of mailing is dated.

968 4. When the receipt from an established courier company is
 969 dated.

970 5. When the electronic receipt issued pursuant to s.
 971 106.0705 or other electronic filing system authorized in this
 972 section is dated.

973
 974 Such fine shall be paid to the filing officer within 20 days
 975 after receipt of the notice of payment due, unless appeal is
 976 made to the Florida Elections Commission pursuant to paragraph
 977 (c). Notice is deemed complete upon proof of delivery of written
 978 notice to the mailing or street address on record with the
 979 filing officer. In the case of a candidate, such fine ~~is shall~~
 980 not ~~be~~ an allowable campaign expenditure and shall be paid only
 981 from personal funds of the candidate. An officer or member of a
 982 political committee ~~is shall~~ not ~~be~~ personally liable for such
 983 fine.

984 (c) Any candidate or chair of a political committee may
 985 appeal or dispute the fine, based upon, but not limited to,
 986 unusual circumstances surrounding the failure to file on the

578-02814-13 20131382c2

987 designated due date, and may request and shall be entitled to a
 988 hearing before the Florida Elections Commission, which shall
 989 have the authority to waive the fine in whole or in part. The
 990 Florida Elections Commission must consider the mitigating and
 991 aggravating circumstances contained in s. 106.265(2) when
 992 determining the amount of a fine, if any, to be waived. Any such
 993 request shall be made within 20 days after receipt of the notice
 994 of payment due. In such case, the candidate or chair of the
 995 political committee shall, within the 20-day period, notify the
 996 filing officer in writing of his or her intention to bring the
 997 matter before the commission.

998 (d) The appropriate filing officer shall notify the Florida
 999 Elections Commission of the repeated late filing by a candidate
 1000 or political committee, the failure of a candidate or political
 1001 committee to file a report after notice, or the failure to pay
 1002 the fine imposed. The commission shall investigate only those
 1003 alleged late filing violations specifically identified by the
 1004 filing officer and as set forth in the notification. Any other
 1005 alleged violations must be separately stated and reported by the
 1006 division to the commission under s. 106.25(2).

1007 (9) The Department of State may prescribe by rule the
 1008 requirements for filing campaign treasurers' reports as set
 1009 forth in this chapter.

1010 Section 10. Section 106.0702, Florida Statutes, is created
 1011 to read:

1012 106.0702 Reporting; political party executive committee
 1013 candidates.—

1014 (1) An individual seeking a publicly-elected position on a
 1015 political party executive committee who receives a contribution

578-02814-13 20131382c2

1016 or makes an expenditure shall file a report of all contributions
 1017 received, and all expenditures made. The report shall be filed
 1018 on the 4th day immediately preceding the primary election.

1019 (2) (a) The report shall be filed with the supervisor of
 1020 elections of the appropriate county. Reports shall be filed no
 1021 later than 5 p.m. of the day designated; however, any report
 1022 postmarked by the United States Postal Service by the day
 1023 designated shall be deemed to have been filed in a timely
 1024 manner. Any report received by the filing officer within 5 days
 1025 after the designated due date shall be deemed timely filed
 1026 unless it has a postmark that indicates that the report was
 1027 mailed after the designated due date. A certificate of mailing
 1028 obtained from and dated by the United States Postal Service at
 1029 the time of mailing, or a receipt from an established courier
 1030 company, which bears a date on or before the date on which the
 1031 report is due is proof of mailing in a timely manner. The report
 1032 filed must contain information of all contributions received and
 1033 expenditures made as of the day preceding the designated due
 1034 date. All such reports must be open to public inspection.

1035 (b) A reporting individual may submit the report required
 1036 under this section through an electronic filing system, if used
 1037 by the supervisor for other candidates, in order to satisfy the
 1038 filing requirement. Such reports shall be completed and filed
 1039 through the electronic filing system not later than midnight on
 1040 the 4th day immediately preceding the primary election.

1041 (3) (a) A report that is deemed to be incomplete by the
 1042 supervisor shall be accepted on a conditional basis. The
 1043 supervisor shall send a notice to the reporting individual by
 1044 certified mail or by another method using a common carrier that

578-02814-13 20131382c2

1045 provides proof of delivery as to why the report is incomplete.
 1046 Within 7 days after receipt of such notice, the reporting
 1047 individual must file an addendum to the report providing all
 1048 information necessary to complete the report in compliance with
 1049 this section. Failure to file a complete report after such
 1050 notice constitutes a violation of this chapter.
 1051 (b) Notice is deemed complete upon proof of delivery of a
 1052 written notice to the mailing or street address which is on
 1053 record with the supervisor.
 1054 (4) (a) Each report required by this section must contain:
 1055 1. The full name, address, and occupation of each person
 1056 who has made one or more contributions to or for the reporting
 1057 individual within the reporting period, together with the amount
 1058 and date of such contributions. For corporations, the report
 1059 must provide as clear a description as practicable of the
 1060 principal type of business conducted by the corporations.
 1061 However, if the contribution is \$100 or less or is from a
 1062 relative, as defined in s. 112.312, provided that the
 1063 relationship is reported, the occupation of the contributor or
 1064 the principal type of business need not be listed.
 1065 2. The name and address of each political committee from
 1066 which the reporting individual has received, or to which the
 1067 reporting individual has made, any transfer of funds within the
 1068 reporting period, together with the amounts and dates of all
 1069 transfers.
 1070 3. Each loan for campaign purposes from any person or
 1071 political committee within the reporting period, together with
 1072 the full name, address, and occupation, and principal place of
 1073 business, if any, of the lender and endorser, if any, and the

Page 37 of 89

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

578-02814-13 20131382c2

1074 date and amount of such loans.
 1075 4. A statement of each contribution, rebate, refund, or
 1076 other receipt not otherwise listed under subparagraphs 1.-3.
 1077 5. The total sums of all loans, in-kind contributions, and
 1078 other receipts by or for such reporting individual during the
 1079 reporting period. The reporting forms shall be designed to
 1080 elicit separate totals for in-kind contributions, loans, and
 1081 other receipts.
 1082 6. The full name and address of each person to whom
 1083 expenditures have been made by or on behalf of the reporting
 1084 individual within the reporting period; the amount, date, and
 1085 purpose of each such expenditure; and the name and address of,
 1086 and office sought by, each reporting individual on whose behalf
 1087 such expenditure was made.
 1088 7. The amount and nature of debts and obligations owed by
 1089 or to the reporting individual which relate to the conduct of
 1090 any political campaign.
 1091 8. Transaction information for each credit card purchase.
 1092 Receipts for each credit card purchase shall be retained by the
 1093 reporting individual.
 1094 9. The amount and nature of any separate interest-bearing
 1095 accounts or certificates of deposit and identification of the
 1096 financial institution in which such accounts or certificates of
 1097 deposit are located.
 1098 (b) The supervisor shall make available to any reporting
 1099 individual a reporting form that the reporting individual may
 1100 use to indicate contributions received by the reporting
 1101 individual but returned to the contributor before deposit.
 1102 (5) The reporting individual shall certify as to the

Page 38 of 89

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

578-02814-13 20131382c2

1103 correctness of the report and shall bear the responsibility for
 1104 the accuracy and veracity of each report. Any reporting
 1105 individual who willfully certifies the correctness of the report
 1106 while knowing that such report is incorrect, false, or
 1107 incomplete commits a misdemeanor of the first degree, punishable
 1108 as provided in s. 775.082 or s. 775.083.

1109 (6) Notwithstanding any other provisions of this chapter,
 1110 the filing of the required report is waived if the reporting
 1111 individual has not received contributions or expended any
 1112 reportable funds.

1113 (7) (a) A reporting individual who fails to file a report on
 1114 the designated due date is subject to a fine, and such fine
 1115 shall be paid only from personal funds of the reporting
 1116 individual. The fine shall be \$50 per day for the first 3 days
 1117 late and, thereafter, \$500 per day for each late day, not to
 1118 exceed 25 percent of the total receipts or expenditures,
 1119 whichever is greater. The fine shall be assessed by the
 1120 supervisor, and the moneys collected shall be deposited into the
 1121 general revenue fund of the political subdivision.

1122 (b) The supervisor shall determine the amount of the fine
 1123 due based upon the earliest of the following:

- 1124 1. When the report is actually received by the supervisor.
- 1125 2. When the report is postmarked;
- 1126 3. When the certificate of mailing is dated;
- 1127 4. When the receipt from an established courier company is
 1128 dated; or
- 1129 5. When the report is completed and filed through the
 1130 electronic filing system, if applicable.

578-02814-13 20131382c2

1132 Such fine shall be paid to the supervisor within 20 days after
 1133 receipt of the notice of payment due unless appeal is made to
 1134 the Florida Elections Commission pursuant to paragraph (c).
 1135 Notice is deemed complete upon proof of delivery of written
 1136 notice to the mailing or street address on record with the
 1137 supervisor. Such fine may not be an allowable campaign
 1138 expenditure and shall be paid only from personal funds of the
 1139 reporting individual.

1140 (c) A reporting individual may appeal or dispute the fine,
 1141 based upon, but not limited to, unusual circumstances
 1142 surrounding the failure to file on the designated due date, and
 1143 may request and is entitled to a hearing before the Florida
 1144 Elections Commission, which has the authority to waive the fine
 1145 in whole or in part. The Florida Elections Commission must
 1146 consider the mitigating and aggravating circumstances contained
 1147 in s. 106.265(2) when determining the amount of a fine, if any,
 1148 to be waived. Any such request shall be made within 20 days
 1149 after receipt of the notice of payment due. In such case, the
 1150 reporting individual must, within 20 days after receipt of the
 1151 notice, notify the supervisor in writing of his or her intention
 1152 to bring the matter before the commission.

1153 (d) The appropriate supervisor shall notify the Florida
 1154 Elections Commission of the late filing by a reporting
 1155 individual, the failure of a reporting individual to file a
 1156 report after notice, or the failure to pay the fine imposed. The
 1157 commission shall investigate only those alleged late filing
 1158 violations specifically identified by the supervisor and as set
 1159 forth in the notification. Any other alleged violations must be
 1160 separately stated and reported by the division to the commission

578-02814-13 20131382c2

1161 under s. 106.25(2).1162 Section 11. Section 106.0703, Florida Statutes, is
1163 reenacted and amended to read:1164 106.0703 Electioneering communications organizations;
1165 reporting requirements; certification and filing; penalties.—

1166 (1) (a) Each electioneering communications organization
1167 shall file regular reports of all contributions received and all
1168 expenditures made by or on behalf of the organization. Except as
1169 provided in paragraphs (b) and (c), reports must ~~shall~~ be filed
1170 on the 10th day following the end of each calendar ~~month~~ ~~quarter~~
1171 from the time the organization is registered. However, if the
1172 10th day following the end of a calendar ~~month~~ ~~quarter~~ occurs on
1173 a Saturday, Sunday, or legal holiday, the report must ~~shall~~ be
1174 filed on the next following day that is not a Saturday, Sunday,
1175 or legal holiday. ~~Monthly~~ ~~Quarterly~~ reports must ~~shall~~ include
1176 all contributions received and expenditures made during the
1177 calendar ~~month~~ ~~quarter~~ that have not otherwise been reported
1178 pursuant to this section.

1179 (b) For an electioneering communications organization
1180 required to file reports with the division, reports must be
1181 filed:

1182 1. On the 60th day immediately preceding the primary
1183 election, and each week thereafter, with the last weekly report
1184 being filed on the 11th day immediately preceding the general
1185 election.

1186 2. On the 10th day immediately preceding the general
1187 election, and every day thereafter, with the last daily report
1188 being filed the day before the general election ~~Following the~~
1189 last day of candidates qualifying for office, the reports shall

578-02814-13 20131382c2

1190 ~~be filed on the 32nd, 18th, and 4th days immediately preceding~~
1191 ~~the primary election and on the 46th, 32nd, 18th, and 4th days~~
1192 ~~immediately preceding the general election.~~

1193 (c) For an electioneering communications organization
1194 required to file reports with a filing officer other than the
1195 division, reports must be filed on the 60th day immediately
1196 preceding the primary election, and biweekly on each Friday
1197 thereafter through and including the 4th day immediately
1198 preceding the general election, with additional reports due on
1199 the 25th and 11th days before the primary election and the
1200 general election.

1201 (d) ~~(e)~~ When a special election is called to fill a vacancy
1202 in office, all electioneering communications organizations
1203 making contributions or expenditures to influence the results of
1204 the special election shall file reports with the filing officer
1205 on the dates set by the Department of State pursuant to s.
1206 100.111.

1207 (e) ~~(d)~~ In addition to the reports required by paragraph
1208 (a), an electioneering communications organization that is
1209 registered with the Department of State and that makes a
1210 contribution or expenditure to influence the results of a county
1211 or municipal election that is not being held at the same time as
1212 a state or federal election must file reports with the county or
1213 municipal filing officer on the same dates as county or
1214 municipal candidates or committees for that election. The
1215 electioneering communications organization must also include the
1216 expenditure in the next report filed with the Division of
1217 Elections pursuant to this section following the county or
1218 municipal election.

578-02814-13

20131382c2

1219 (f) ~~(e)~~ The filing officer shall make available to each
 1220 electioneering communications organization a schedule
 1221 designating the beginning and end of reporting periods as well
 1222 as the corresponding designated due dates.

1223 (2) (a) Except as provided in s. 106.0705, the reports
 1224 required of an electioneering communications organization shall
 1225 be filed with the filing officer not later than 5 p.m. of the
 1226 day designated. However, any report postmarked by the United
 1227 States Postal Service no later than midnight of the day
 1228 designated shall be deemed to have been filed in a timely
 1229 manner. Any report received by the filing officer within 5 days
 1230 after the designated due date that was delivered by the United
 1231 States Postal Service shall be deemed timely filed unless it has
 1232 a postmark that indicates that the report was mailed after the
 1233 designated due date. A certificate of mailing obtained from and
 1234 dated by the United States Postal Service at the time of
 1235 mailing, or a receipt from an established courier company, which
 1236 bears a date on or before the date on which the report is due,
 1237 shall be proof of mailing in a timely manner. Reports shall
 1238 contain information of all previously unreported contributions
 1239 received and expenditures made as of the preceding Friday,
 1240 except that the report filed on the Friday immediately preceding
 1241 the election shall contain information of all previously
 1242 unreported contributions received and expenditures made as of
 1243 the day preceding the designated due date. All such reports
 1244 shall be open to public inspection.

1245 (b)1. Any report that is deemed to be incomplete by the
 1246 officer with whom the electioneering communications organization
 1247 files shall be accepted on a conditional basis. The treasurer of

Page 43 of 89

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

578-02814-13

20131382c2

1248 the electioneering communications organization shall be
 1249 notified, by certified mail or other common carrier that can
 1250 establish proof of delivery for the notice, as to why the report
 1251 is incomplete. Within 7 days after receipt of such notice, the
 1252 treasurer must file an addendum to the report providing all
 1253 information necessary to complete the report in compliance with
 1254 this section. Failure to file a complete report after such
 1255 notice constitutes a violation of this chapter.

1256 2. Notice is deemed sufficient upon proof of delivery of
 1257 written notice to the mailing or street address of the treasurer
 1258 or registered agent of the electioneering communication
 1259 organization on record with the filing officer.

1260 (3) (a) Each report required by this section must contain:

1261 1. The full name, address, and occupation, if any, of each
 1262 person who has made one or more contributions to or for such
 1263 electioneering communications organization within the reporting
 1264 period, together with the amount and date of such contributions.
 1265 For corporations, the report must provide as clear a description
 1266 as practicable of the principal type of business conducted by
 1267 the corporation. However, if the contribution is \$100 or less,
 1268 the occupation of the contributor or the principal type of
 1269 business need not be listed.

1270 2. The name and address of each political committee from
 1271 which or to which the reporting electioneering communications
 1272 organization made any transfer of funds, together with the
 1273 amounts and dates of all transfers.

1274 3. Each loan for electioneering communication purposes to
 1275 or from any person or political committee within the reporting
 1276 period, together with the full names, addresses, and occupations

Page 44 of 89

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

578-02814-13 20131382c2

1277 and principal places of business, if any, of the lender and
1278 endorsers, if any, and the date and amount of such loans.

1279 4. A statement of each contribution, rebate, refund, or
1280 other receipt not otherwise listed under subparagraphs 1.-3.

1281 5. The total sums of all loans, in-kind contributions, and
1282 other receipts by or for such electioneering communications
1283 organization during the reporting period. The reporting forms
1284 shall be designed to elicit separate totals for in-kind
1285 contributions, loans, and other receipts.

1286 6. The full name and address of each person to whom
1287 expenditures have been made by or on behalf of the
1288 electioneering communications organization within the reporting
1289 period and the amount, date, and purpose of each expenditure.

1290 7. The full name and address of each person to whom an
1291 expenditure for personal services, salary, or reimbursement for
1292 expenses has been made and that is not otherwise reported,
1293 including the amount, date, and purpose of the expenditure.

1294 8. The total sum of expenditures made by the electioneering
1295 communications organization during the reporting period.

1296 9. The amount and nature of debts and obligations owed by
1297 or to the electioneering communications organization that relate
1298 to the conduct of any electioneering communication.

1299 10. Transaction information for each credit card purchase.
1300 Receipts for each credit card purchase shall be retained by the
1301 electioneering communications organization.

1302 11. The amount and nature of any separate interest-bearing
1303 accounts or certificates of deposit and identification of the
1304 financial institution in which such accounts or certificates of
1305 deposit are located.

578-02814-13 20131382c2

1306 12. The primary purposes of an expenditure made indirectly
1307 through an electioneering communications organization for goods
1308 and services, such as communications media placement or
1309 procurement services and other expenditures that include
1310 multiple components as part of the expenditure. The primary
1311 purpose of an expenditure shall be that purpose, including
1312 integral and directly related components, that comprises 80
1313 percent of such expenditure.

1314 (b) The filing officer shall make available to any
1315 electioneering communications organization a reporting form
1316 which the electioneering communications organization may use to
1317 indicate contributions received by the electioneering
1318 communications organization but returned to the contributor
1319 before deposit.

1320 (4) The treasurer of the electioneering communications
1321 organization shall certify as to the correctness of each report,
1322 and each person so certifying shall bear the responsibility for
1323 the accuracy and veracity of each report. Any treasurer who
1324 willfully certifies the correctness of any report while knowing
1325 that such report is incorrect, false, or incomplete commits a
1326 misdemeanor of the first degree, punishable as provided in s.
1327 775.082 or s. 775.083.

1328 (5) The electioneering communications organization
1329 depository shall provide statements reflecting deposits and
1330 expenditures from the account to the treasurer, who shall retain
1331 the records pursuant to s. 106.06. The records maintained by the
1332 depository with respect to the account shall be subject to
1333 inspection by an agent of the Division of Elections or the
1334 Florida Elections Commission at any time during normal banking

578-02814-13 20131382c2

1335 hours, and such depository shall furnish certified copies of any
1336 such records to the Division of Elections or the Florida
1337 Elections Commission upon request.

1338 (6) Notwithstanding any other provisions of this chapter,
1339 in any reporting period during which an electioneering
1340 communications organization has not received funds, made any
1341 contributions, or expended any reportable funds, the treasurer
1342 shall file a written report with the filing officer by the
1343 prescribed reporting date that no reportable contributions or
1344 expenditures were made during the reporting period.

1345 (7) (a) Any electioneering communications organization
1346 failing to file a report on the designated due date shall be
1347 subject to a fine as provided in paragraph (b) for each late
1348 day. The fine shall be assessed by the filing officer, and the
1349 moneys collected shall be deposited:

1350 1. In the General Revenue Fund, in the case of an
1351 electioneering communications organization that registers with
1352 the Division of Elections; or

1353 2. In the general revenue fund of the political
1354 subdivision, in the case of an electioneering communications
1355 organization that registers with an officer of a political
1356 subdivision.

1357
1358 No separate fine shall be assessed for failure to file a copy of
1359 any report required by this section.

1360 (b) Upon determining that a report is late, the filing
1361 officer shall immediately notify the electioneering
1362 communications organization as to the failure to file a report
1363 by the designated due date and that a fine is being assessed for

578-02814-13 20131382c2

1364 each late day. The fine shall be \$50 per day for the first 3
1365 days late and, thereafter, \$500 per day for each late day, not
1366 to exceed 25 percent of the total receipts or expenditures,
1367 whichever is greater, for the period covered by the late report.
1368 However, for the reports immediately preceding each primary and
1369 general election, the fine shall be \$500 per day for each late
1370 day, not to exceed 25 percent of the total receipts or
1371 expenditures, whichever is greater, for the period covered by
1372 the late report. Upon receipt of the report, the filing officer
1373 shall determine the amount of the fine which is due and shall
1374 notify the electioneering communications organization. The
1375 filing officer shall determine the amount of the fine due based
1376 upon the earliest of the following:

- 1377 1. When the report is actually received by such officer.
- 1378 2. When the report is postmarked.
- 1379 3. When the certificate of mailing is dated.
- 1380 4. When the receipt from an established courier company is
1381 dated.
- 1382 5. When the electronic receipt issued pursuant to s.
1383 106.0705 or other electronic filing system authorized in this
1384 section is dated.

1385
1386 Such fine shall be paid to the filing officer within 20 days
1387 after receipt of the notice of payment due, unless appeal is
1388 made to the Florida Elections Commission pursuant to paragraph
1389 (c). Notice is deemed sufficient upon proof of delivery of
1390 written notice to the mailing or street address on record with
1391 the filing officer. An officer or member of an electioneering
1392 communications organization shall not be personally liable for

578-02814-13 20131382c2

1393 such fine.

1394 (c) The treasurer of an electioneering communications
 1395 organization may appeal or dispute the fine, based upon, but not
 1396 limited to, unusual circumstances surrounding the failure to
 1397 file on the designated due date, and may request and shall be
 1398 entitled to a hearing before the Florida Elections Commission,
 1399 which shall have the authority to waive the fine in whole or in
 1400 part. The Florida Elections Commission must consider the
 1401 mitigating and aggravating circumstances contained in s.
 1402 106.265(2) when determining the amount of a fine, if any, to be
 1403 waived. Any such request shall be made within 20 days after
 1404 receipt of the notice of payment due. In such case, the
 1405 treasurer of the electioneering communications organization
 1406 shall, within the 20-day period, notify the filing officer in
 1407 writing of his or her intention to bring the matter before the
 1408 commission.

1409 (d) The appropriate filing officer shall notify the Florida
 1410 Elections Commission of the repeated late filing by an
 1411 electioneering communications organization, the failure of an
 1412 electioneering communications organization to file a report
 1413 after notice, or the failure to pay the fine imposed. The
 1414 commission shall investigate only those alleged late filing
 1415 violations specifically identified by the filing officer and as
 1416 set forth in the notification. Any other alleged violations must
 1417 be stated separately and reported by the division to the
 1418 commission under s. 106.25(2).

1419 (8) Electioneering communications organizations shall not
 1420 use credit cards.

1421 Section 12. Section 106.0705, Florida Statutes, is

Page 49 of 89

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

578-02814-13 20131382c2

1422 reenacted and amended to read:

1423 106.0705 Electronic filing of campaign treasurer's
 1424 reports.—

1425 (1) As used in this section, "electronic filing system"
 1426 means an Internet system for recording and reporting campaign
 1427 finance activity by reporting period.

1428 (2) (a) Each individual who is required to file reports with
 1429 the division pursuant to s. 106.07 or s. 106.141 must file such
 1430 reports by means of the division's electronic filing system.

1431 (b) Each political committee, ~~committee of continuous~~
 1432 ~~existence~~, electioneering communications organization,
 1433 affiliated party committee, or state executive committee that is
 1434 required to file reports with the division under ~~s. 106.04~~, s.
 1435 106.07, s. 106.0703, or s. 106.29, as applicable, must file such
 1436 reports with the division by means of the division's electronic
 1437 filing system.

1438 (c) Each person or organization that is required to file
 1439 reports with the division under s. 106.071 must file such
 1440 reports by means of the division's electronic filing system.

1441 (3) Reports filed pursuant to this section shall be
 1442 completed and filed through the electronic filing system not
 1443 later than midnight of the day designated. Reports not filed by
 1444 midnight of the day designated are late filed and are subject to
 1445 the penalties under ~~s. 106.04(9)~~, s. 106.07(8), s. 106.0703(7),
 1446 or s. 106.29(3), as applicable.

1447 (4) Each report filed pursuant to this section is
 1448 considered to be under oath by the candidate and treasurer, the
 1449 chair and treasurer, the treasurer under s. 106.0703, or the
 1450 leader and treasurer under s. 103.092, whichever is applicable,

Page 50 of 89

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

578-02814-13 20131382c2

1451 and such persons are subject to the provisions of ~~§~~
 1452 ~~106.04(4)(d)~~, s. 106.07(5), s. 106.0703(4), or s. 106.29(2), as
 1453 applicable. Persons given a secure sign-on to the electronic
 1454 filing system are responsible for protecting such from
 1455 disclosure and are responsible for all filings using such
 1456 credentials, unless they have notified the division that their
 1457 credentials have been compromised.

1458 (5) The electronic filing system developed by the division
 1459 must:

1460 (a) Be based on access by means of the Internet.

1461 (b) Be accessible by anyone with Internet access using
 1462 standard web-browsing software.

1463 (c) Provide for direct entry of campaign finance
 1464 information as well as upload of such information from campaign
 1465 finance software certified by the division.

1466 (d) Provide a method that prevents unauthorized access to
 1467 electronic filing system functions.

1468 (6) The division shall adopt rules ~~pursuant to ss.~~
 1469 ~~120.536(1) and 120.54~~ to administer this section and provide for
 1470 the reports required to be filed pursuant to this section. Such
 1471 rules shall, at a minimum, provide:

1472 (a) Alternate filing procedures in case the division's
 1473 electronic filing system is not operable.

1474 (b) For the issuance of an electronic receipt to the person
 1475 submitting the report indicating and verifying that the report
 1476 has been filed.

1477 Section 13. Section 106.08, Florida Statutes, is amended to
 1478 read:

1479 106.08 Contributions; limitations on.-

578-02814-13 20131382c2

1480 (1) (a) Except for political parties or affiliated party
 1481 committees, no person or political committee, ~~or committee of~~
 1482 ~~continuous existence~~ may, in any election, make contributions in
 1483 excess of the following amounts: in excess of \$500 to any
 1484 candidate for election to or retention in office or to any
 1485 political committee supporting or opposing one or more
 1486 candidates.

1487 1. To a candidate for statewide office or for retention as
 1488 a justice of the Supreme Court, \$3,000. Candidates for the
 1489 offices of Governor and Lieutenant Governor on the same ticket
 1490 are considered a single candidate for the purpose of this
 1491 subparagraph ~~section~~.

1492 2. To a candidate for retention as a judge of a district
 1493 court of appeal, \$2,000.

1494 3. To a candidate for legislative or multicounty office; a
 1495 candidate for countywide office or in any election conducted on
 1496 less than a countywide basis; or a candidate for county court
 1497 judge or circuit judge, \$500.

1498 (b) ~~1-~~ The contribution limits provided in this subsection
 1499 do not apply to contributions made by a state or county
 1500 executive committee of a political party or affiliated party
 1501 committee regulated by chapter 103 or to amounts contributed by
 1502 a candidate to his or her own campaign.

1503 ~~2. Notwithstanding the limits provided in this subsection,~~
 1504 ~~an unemancipated child under the age of 18 years of age may not~~
 1505 ~~make a contribution in excess of \$100 to any candidate or to any~~
 1506 ~~political committee supporting one or more candidates.~~

1507 (c) The contribution limits of this subsection apply to
 1508 each election. For purposes of this subsection, the primary

578-02814-13 20131382c2

1509 election and general election are separate elections so long as
 1510 the candidate is not an unopposed candidate as defined in s.
 1511 106.011 ~~106.011(15)~~. However, for the purpose of contribution
 1512 limits with respect to candidates for retention as a justice or
 1513 judge, there is only one election, which is the general
 1514 election.

1515 (2) (a) A candidate may not accept contributions from a
 1516 county executive committee of a political party whose
 1517 contributions in the aggregate exceed \$50,000, or from the
 1518 national, or state, or county executive committees of a
 1519 political party, including any subordinate committee of such
 1520 political party or affiliated party committees, whose ~~which~~
 1521 contributions in the aggregate exceed \$50,000.

1522 (b) A candidate for statewide office may not accept
 1523 contributions from national, state, or county executive
 1524 committees of a political party, including any subordinate
 1525 committee of the political party, or affiliated party
 1526 committees, which contributions in the aggregate exceed
 1527 \$250,000. Polling services, research services, costs for
 1528 campaign staff, professional consulting services, and telephone
 1529 calls are not contributions to be counted toward the
 1530 contribution limits of paragraph (a) or this paragraph. Any item
 1531 not expressly identified in this paragraph as nonallocable is a
 1532 contribution in an amount equal to the fair market value of the
 1533 item and must be counted as allocable toward the contribution
 1534 limits of paragraph (a) or this paragraph. Nonallocable, in-kind
 1535 contributions must be reported by the candidate under s. 106.07
 1536 and by the political party or affiliated party committee under
 1537 s. 106.29.

578-02814-13 20131382c2

1538 (3) (a) Any contribution received by a candidate with
 1539 opposition in an election or by the campaign treasurer or a
 1540 deputy campaign treasurer of such a candidate on the day of that
 1541 election or less than 5 days ~~before~~ before ~~prior to~~ the day of that
 1542 election must be returned by him or her to the person or
 1543 committee contributing it and may not be used or expended by or
 1544 on behalf of the candidate.

1545 (b) Any contribution received by a candidate or by the
 1546 campaign treasurer or a deputy campaign treasurer of a candidate
 1547 after the date at which the candidate withdraws his or her
 1548 candidacy, or after the date the candidate is defeated, becomes
 1549 unopposed, or is elected to office must be returned to the
 1550 person or committee contributing it and may not be used or
 1551 expended by or on behalf of the candidate.

1552 (4) Any contribution received by the chair, campaign
 1553 treasurer, or deputy campaign treasurer of a political committee
 1554 supporting or opposing a candidate with opposition in an
 1555 election or supporting or opposing an issue on the ballot in an
 1556 election on the day of that election or less than 5 days before
 1557 ~~prior to~~ the day of that election may not be obligated or
 1558 expended by the committee until after the date of the election.

1559 (5) (a) A person may not make any contribution through or in
 1560 the name of another, directly or indirectly, in any election.

1561 (b) Candidates, political committees, affiliated party
 1562 committees, and political parties may not solicit contributions
 1563 from any religious, charitable, civic, or other causes or
 1564 organizations established primarily for the public good.

1565 (c) Candidates, political committees, affiliated party
 1566 committees, and political parties may not make contributions, in

578-02814-13 20131382c2

1567 exchange for political support, to any religious, charitable,
 1568 civic, or other cause or organization established primarily for
 1569 the public good. It is not a violation of this paragraph for:

1570 1. A candidate, political committee, affiliated party
 1571 committee, or political party executive committee to make gifts
 1572 of money in lieu of flowers in memory of a deceased person;

1573 2. A candidate to continue membership in, or make regular
 1574 donations from personal or business funds to, religious,
 1575 political party, affiliated party committee, civic, or
 1576 charitable groups of which the candidate is a member or to which
 1577 the candidate has been a regular donor for more than 6 months;
 1578 or

1579 3. A candidate to purchase, with campaign funds, tickets,
 1580 admission to events, or advertisements from religious, civic,
 1581 political party, affiliated party committee, or charitable
 1582 groups.

1583 (6) (a) A political party or affiliated party committee may
 1584 not accept any contribution that has been specifically
 1585 designated for the partial or exclusive use of a particular
 1586 candidate. Any contribution so designated must be returned to
 1587 the contributor and may not be used or expended by or on behalf
 1588 of the candidate. Funds contributed to an affiliated party
 1589 committee ~~may shall~~ not be ~~deemed as~~ designated for the partial
 1590 or exclusive use of a leader as defined in s. 103.092.

1591 (b)1. A political party or affiliated party committee may
 1592 not accept any in-kind contribution that fails to provide a
 1593 direct benefit to the political party or affiliated party
 1594 committee. A "direct benefit" includes, but is not limited to,
 1595 fundraising or furthering the objectives of the political party

Page 55 of 89

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

578-02814-13 20131382c2

1596 or affiliated party committee.

1597 2.a. An in-kind contribution to a state political party may
 1598 be accepted only by the chairperson of the state political party
 1599 or by the chairperson's designee or designees whose names are on
 1600 file with the division in a form acceptable to the division
 1601 ~~before~~ prior to the date of the written notice required in sub-
 1602 subparagraph b. An in-kind contribution to a county political
 1603 party may be accepted only by the chairperson of the county
 1604 political party or by the county chairperson's designee or
 1605 designees whose names are on file with the supervisor of
 1606 elections of the respective county ~~before~~ prior to the date of
 1607 the written notice required in sub-subparagraph b. An in-kind
 1608 contribution to an affiliated party committee may be accepted
 1609 only by the leader of the affiliated party committee as defined
 1610 in s. 103.092 or by the leader's designee or designees whose
 1611 names are on file with the division in a form acceptable to the
 1612 division ~~before~~ prior to the date of the written notice required
 1613 in sub-subparagraph b.

1614 b. A person making an in-kind contribution to a state or
 1615 county political party or affiliated party committee must
 1616 provide prior written notice of the contribution to a person
 1617 described in sub-subparagraph a. The prior written notice must
 1618 be signed and dated and may be provided by an electronic or
 1619 facsimile message. However, prior written notice is not required
 1620 for an in-kind contribution that consists of food and beverage
 1621 in an aggregate amount not exceeding \$1,500 which is consumed at
 1622 a single sitting or event if such in-kind contribution is
 1623 accepted in advance by a person specified in sub-subparagraph a.

1624 c. A person described in sub-subparagraph a. may accept an

Page 56 of 89

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

578-02814-13 20131382c2

1625 in-kind contribution requiring prior written notice only in a
 1626 writing that is dated before the in-kind contribution is made.
 1627 Failure to obtain the required written acceptance of an in-kind
 1628 contribution to a state or county political party or affiliated
 1629 party committee constitutes a refusal of the contribution.

1630 d. A copy of each prior written acceptance required under
 1631 sub-subparagraph c. must be filed at the time the regular
 1632 reports of contributions and expenditures required under s.
 1633 106.29 are filed by the state executive committee, county
 1634 executive committee, and affiliated party committee. A state
 1635 executive committee and an affiliated party committee must file
 1636 with the division. A county executive committee must file with
 1637 the county's supervisor of elections.

1638 e. An in-kind contribution may not be given to a state or
 1639 county political party or affiliated party committee unless the
 1640 in-kind contribution is made as provided in this subparagraph.

1641 (7) (a) Any person who knowingly and willfully makes or
 1642 accepts no more than one contribution in violation of subsection
 1643 (1) or subsection (5), or any person who knowingly and willfully
 1644 fails or refuses to return any contribution as required in
 1645 subsection (3), commits a misdemeanor of the first degree,
 1646 punishable as provided in s. 775.082 or s. 775.083. If any
 1647 corporation, partnership, or other business entity or any
 1648 political party, affiliated party committee, political
 1649 committee, ~~committee of continuous existence~~, or electioneering
 1650 communications organization is convicted of knowingly and
 1651 willfully violating any provision punishable under this
 1652 paragraph, it shall be fined not less than \$1,000 and not more
 1653 than \$10,000. If it is a domestic entity, it may be ordered

578-02814-13 20131382c2

1654 dissolved by a court of competent jurisdiction; if it is a
 1655 foreign or nonresident business entity, its right to do business
 1656 in this state may be forfeited. Any officer, partner, agent,
 1657 attorney, or other representative of a corporation, partnership,
 1658 or other business entity, or of a political party, affiliated
 1659 party committee, political committee, ~~committee of continuous~~
 1660 ~~existence~~, electioneering communications organization, or
 1661 organization exempt from taxation under s. 527 or s. 501(c) (4)
 1662 of the Internal Revenue Code, who aids, abets, advises, or
 1663 participates in a violation of any provision punishable under
 1664 this paragraph commits a misdemeanor of the first degree,
 1665 punishable as provided in s. 775.082 or s. 775.083.

1666 (b) Any person who knowingly and willfully makes or accepts
 1667 two or more contributions in violation of subsection (1) or
 1668 subsection (5) commits a felony of the third degree, punishable
 1669 as provided in s. 775.082, s. 775.083, or s. 775.084. If any
 1670 corporation, partnership, or other business entity or any
 1671 political party, affiliated party committee, political
 1672 committee, ~~committee of continuous existence~~, or electioneering
 1673 communications organization is convicted of knowingly and
 1674 willfully violating any provision punishable under this
 1675 paragraph, it shall be fined not less than \$10,000 and not more
 1676 than \$50,000. If it is a domestic entity, it may be ordered
 1677 dissolved by a court of competent jurisdiction; if it is a
 1678 foreign or nonresident business entity, its right to do business
 1679 in this state may be forfeited. Any officer, partner, agent,
 1680 attorney, or other representative of a corporation, partnership,
 1681 or other business entity, or of a political committee, ~~committee~~
 1682 ~~of continuous existence~~, political party, affiliated party

578-02814-13 20131382c2

1683 committee, or electioneering communications organization, or
 1684 organization exempt from taxation under s. 527 or s. 501(c) (4)
 1685 of the Internal Revenue Code, who aids, abets, advises, or
 1686 participates in a violation of any provision punishable under
 1687 this paragraph commits a felony of the third degree, punishable
 1688 as provided in s. 775.082, s. 775.083, or s. 775.084.

1689 (8) Except when otherwise provided in subsection (7), any
 1690 person who knowingly and willfully violates any provision of
 1691 this section shall, in addition to any other penalty prescribed
 1692 by this chapter, pay to the state a sum equal to twice the
 1693 amount contributed in violation of this chapter. Each campaign
 1694 treasurer shall pay all amounts contributed in violation of this
 1695 section to the state for deposit in the General Revenue Fund.

1696 (9) This section does not apply to the transfer of funds
 1697 between a primary campaign depository and a savings account or
 1698 certificate of deposit or to any interest earned on such account
 1699 or certificate.

1700 (10) Contributions to a political committee ~~or committee of~~
 1701 ~~continuous existence~~ may be received by an affiliated
 1702 organization and transferred to the bank account of the
 1703 political committee ~~or committee of continuous existence~~ via
 1704 check written from the affiliated organization if such
 1705 contributions are specifically identified as intended to be
 1706 contributed to the political committee ~~or committee of~~
 1707 ~~continuous existence~~. All contributions received in this manner
 1708 shall be reported pursuant to s. 106.07 by the political
 1709 committee ~~or committee of continuous existence~~ as having been
 1710 made by the original contributor.

1711 Section 14. Section 106.11, Florida Statutes, is reenacted

578-02814-13 20131382c2

1712 and amended to read:

1713 106.11 Expenses of and expenditures by candidates and
 1714 political committees.—Each candidate and each political
 1715 committee which designates a primary campaign depository
 1716 pursuant to s. 106.021(1) shall make expenditures from funds on
 1717 deposit in such primary campaign depository only in the
 1718 following manner, with the exception of expenditures made from
 1719 petty cash funds provided by s. 106.12:

1720 (1) (a) 1. The campaign treasurer or deputy campaign
 1721 treasurer of a candidate or political committee shall make
 1722 expenditures from funds on deposit in the primary campaign
 1723 depository only by means of a bank check drawn upon the campaign
 1724 account of the candidate or political committee. The campaign
 1725 account shall be separate from any personal or other account and
 1726 shall be used only for the purpose of depositing contributions
 1727 and making expenditures for the candidate or political
 1728 committee.

1729 2. An expenditure by a political committee must also be
 1730 primarily related to raising or making a contribution,
 1731 influencing the results of an election, making an electioneering
 1732 communication, or other political activity authorized by this
 1733 chapter. A violation of this subparagraph is punishable solely
 1734 as provided in s. 106.19(2).

1735 (b) The checks for such account shall contain, as a
 1736 minimum, the following information:

- 1737 1. The ~~statement~~ "... (name of the campaign account of the
 1738 candidate or political committee.) ... Campaign Account."
- 1739 2. The account number and the name of the bank.
- 1740 3. The exact amount of the expenditure.

578-02814-13

20131382c2

1741 4. The signature of the campaign treasurer or deputy
1742 treasurer.

1743 5. The exact purpose for which the expenditure is
1744 authorized.

1745 6. The name of the payee.

1746 (2) (a) For purposes of this section, debit cards are
1747 considered bank checks, if:

1748 1. Debit cards are obtained from the same bank that has
1749 been designated as the candidate's or political committee's
1750 primary campaign depository.

1751 2. Debit cards are issued in the name of the treasurer,
1752 deputy treasurer, or authorized user and contain the state
1753 ~~"... (name of the campaign account of the candidate or political~~
1754 ~~committee.)... Campaign Account."~~

1755 3. No more than three debit cards are requested and issued.

1756 4. The person using the debit card does not receive cash as
1757 part of, or independent of, any transaction for goods or
1758 services.

1759 5. All receipts for debit card transactions contain:

1760 a. The last four digits of the debit card number.

1761 b. The exact amount of the expenditure.

1762 c. The name of the payee.

1763 d. The signature of the campaign treasurer, deputy
1764 treasurer, or authorized user.

1765 e. The exact purpose for which the expenditure is
1766 authorized.

1767 Any information required by this subparagraph but not included
1768 on the debit card transaction receipt may be handwritten on, or
1769

Page 61 of 89

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

578-02814-13

20131382c2

1770 attached to, the receipt by the authorized user before
1771 submission to the treasurer.

1772 (b) Debit cards are not subject to the requirements of
1773 paragraph (1) (b).

1774 (3) The campaign treasurer, deputy treasurer, or authorized
1775 user who signs the check shall be responsible for the
1776 completeness and accuracy of the information on such check and
1777 for insuring that such expenditure is an authorized expenditure.

1778 (4) No candidate, campaign manager, treasurer, deputy
1779 treasurer, or political committee or any officer or agent
1780 thereof, or any person acting on behalf of any of the foregoing,
1781 shall authorize any expenses, nor shall any campaign treasurer
1782 or deputy treasurer sign a check drawn on the primary campaign
1783 account for any purpose, unless there are sufficient funds on
1784 deposit in the primary depository account of the candidate or
1785 political committee to pay the full amount of the authorized
1786 expense, to honor all other checks drawn on such account, which
1787 checks are outstanding, and to meet all expenses previously
1788 authorized but not yet paid. However, an expense may be incurred
1789 for the purchase of goods or services if there are sufficient
1790 funds on deposit in the primary depository account to pay the
1791 full amount of the incurred expense, to honor all checks drawn
1792 on such account, which checks are outstanding, and to meet all
1793 other expenses previously authorized but not yet paid, provided
1794 that payment for such goods or services is made upon final
1795 delivery and acceptance of the goods or services; and an
1796 expenditure from petty cash pursuant to the provisions of s.
1797 106.12 may be authorized, if there is a sufficient amount of
1798 money in the petty cash fund to pay for such expenditure.

Page 62 of 89

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

578-02814-13 20131382c2

1799 Payment for credit card purchases shall be made pursuant to s.
 1800 106.125. Any expense incurred or authorized in excess of such
 1801 funds on deposit shall, in addition to other penalties provided
 1802 by law, constitute a violation of this chapter. As used in this
 1803 subsection, the term "sufficient funds on deposit in the primary
 1804 depository account of the candidate or political committee"
 1805 means that the funds at issue have been delivered for deposit to
 1806 the financial institution at which such account is maintained.
 1807 The term shall not be construed to mean that such funds are
 1808 available for withdrawal in accordance with the deposit rules or
 1809 the funds availability policies of such financial institution.

1810 (5) A candidate who withdraws his or her candidacy, becomes
 1811 an unopposed candidate, or is eliminated as a candidate or
 1812 elected to office may expend funds from the campaign account to:

1813 (a) Purchase "thank you" advertising for up to 75 days
 1814 after he or she withdraws, becomes unopposed, or is eliminated
 1815 or elected.

1816 (b) Pay for items which were obligated before he or she
 1817 withdrew, became unopposed, or was eliminated or elected.

1818 (c) Pay for expenditures necessary to close down the
 1819 campaign office and to prepare final campaign reports.

1820 (d) Dispose of surplus funds as provided in s. 106.141.

1821 (6) A candidate who makes a loan to his or her campaign and
 1822 reports the loan as required by s. 106.07 may be reimbursed for
 1823 the loan at any time the campaign account has sufficient funds
 1824 to repay the loan and satisfy its other obligations.

1825 Section 15. Section 106.141, Florida Statutes, is amended
 1826 to read:

1827 106.141 Disposition of surplus funds by candidates.-

578-02814-13 20131382c2

1828 (1) Except as provided in subsection (6), each candidate
 1829 who withdraws his or her candidacy, becomes an unopposed
 1830 candidate, or is eliminated as a candidate or elected to office
 1831 shall, within 90 days, dispose of the funds on deposit in his or
 1832 her campaign account and file a report reflecting the
 1833 disposition of all remaining funds. Such candidate ~~may shall~~ not
 1834 accept any contributions, nor ~~may shall~~ any person accept
 1835 contributions on behalf of such candidate, after the candidate
 1836 withdraws his or her candidacy, becomes unopposed, or is
 1837 eliminated or elected. However, if a candidate receives a refund
 1838 check after all surplus funds have been disposed of, the check
 1839 may be endorsed by the candidate and the refund disposed of
 1840 under this section. An amended report must be filed showing the
 1841 refund and subsequent disposition.

1842 (2) Any candidate required to dispose of funds pursuant to
 1843 this section may, before ~~prior to~~ such disposition, be
 1844 reimbursed by the campaign, in full or in part, for any reported
 1845 contributions by the candidate to the campaign.

1846 (3) The campaign treasurer of a candidate who withdraws his
 1847 or her candidacy, becomes unopposed, or is eliminated as a
 1848 candidate or elected to office and who has funds on deposit in a
 1849 separate interest-bearing account or certificate of deposit
 1850 shall, within 7 days after the date of becoming unopposed or the
 1851 date of such withdrawal, elimination, or election, transfer such
 1852 funds and the accumulated interest earned thereon to the
 1853 campaign account of the candidate for disposal under this
 1854 section. However, if the funds are in an account in which
 1855 penalties will apply for withdrawal within the 7-day period, the
 1856 campaign treasurer shall transfer such funds and the accumulated

578-02814-13

20131382c2

1857 interest earned thereon as soon as the funds can be withdrawn
 1858 without penalty, or within 90 days after the candidate becomes
 1859 unopposed, withdraws his or her candidacy, or is eliminated or
 1860 elected, whichever comes first.

1861 (4) (a) Except as provided in paragraph (b), any candidate
 1862 required to dispose of funds pursuant to this section shall, at
 1863 the option of the candidate, dispose of such funds by any of the
 1864 following means, or any combination thereof:

1865 1. Return pro rata to each contributor the funds that have
 1866 not been spent or obligated.

1867 2. Donate the funds that have not been spent or obligated
 1868 to a charitable organization or organizations that meet the
 1869 qualifications of s. 501(c)(3) of the Internal Revenue Code.

1870 3. Give not more than \$25,000 of the funds that have not
 1871 been spent or obligated to the affiliated party committee or
 1872 political party of which such candidate is a member.

1873 4. Give the funds that have not been spent or obligated:

1874 a. In the case of a candidate for state office, to the
 1875 state, to be deposited in either the Election Campaign Financing
 1876 Trust Fund or the General Revenue Fund, as designated by the
 1877 candidate; or

1878 b. In the case of a candidate for an office of a political
 1879 subdivision, to such political subdivision, to be deposited in
 1880 the general fund thereof.

1881 (b) Any candidate required to dispose of funds pursuant to
 1882 this section who has received contributions pursuant to the
 1883 Florida Election Campaign Financing Act shall, after all
 1884 monetary commitments pursuant to s. 106.11(5)(b) and (c) have
 1885 been met, return all surplus campaign funds to the General

578-02814-13

20131382c2

1886 Revenue Fund.

1887 (5) A candidate elected to office or a candidate who will
 1888 be elected to office by virtue of his or her being unopposed
 1889 may, in addition to the disposition methods provided in
 1890 subsection (4), transfer from the campaign account to an office
 1891 account any amount of the funds on deposit in such campaign
 1892 account up to:

1893 (a) Fifty ~~Twenty~~ thousand dollars, for a candidate for
 1894 statewide office. The Governor and Lieutenant Governor shall be
 1895 considered separate candidates for the purpose of this section.

1896 (b) Ten ~~Five~~ thousand dollars, for a candidate for
 1897 multicounty office.

1898 (c) Ten ~~Five~~ thousand dollars multiplied by the number of
 1899 years in the term of office for which elected, for a candidate
 1900 for legislative office.

1901 (d) Five thousand ~~Two thousand five hundred~~ dollars
 1902 multiplied by the number of years in the term of office for
 1903 which elected, for a candidate for county office or for a
 1904 candidate in any election conducted on less than a countywide
 1905 basis.

1906 (e) Six thousand dollars, for a candidate for retention as
 1907 a justice of the Supreme Court.

1908 (f) Three thousand dollars, for a candidate for retention
 1909 as a judge of a district court of appeal.

1910 (g) Three thousand ~~One thousand five hundred~~ dollars, for a
 1911 candidate for county court judge or circuit judge.

1912
 1913 The office account established pursuant to this subsection shall
 1914 be separate from any personal or other account. Any funds so

578-02814-13

20131382c2

1915 transferred by a candidate shall be used only for legitimate
 1916 expenses in connection with the candidate's public office. Such
 1917 expenses may include travel expenses incurred by the officer or
 1918 a staff member; ~~;~~ personal taxes payable on office account funds
 1919 by the candidate or elected public official; professional
 1920 services provided by a certified public accountant or attorney
 1921 for preparation of the elected public official's financial
 1922 disclosure filing pursuant to s. 112.3144 or s. 112.3145; costs
 1923 to prepare, print, produce, and mail holiday cards or
 1924 newsletters about the elected public official's public business
 1925 to constituents, if such correspondence does not constitute a
 1926 political advertisement, independent expenditure, or
 1927 electioneering communication as provided in s. 106.011; fees or
 1928 dues to religious, civic, or charitable organizations of which
 1929 the elected public official is a member; items of modest value
 1930 such as flowers, greeting cards, or personal notes given as a
 1931 substitute for, or in association with, an elected public
 1932 official's personal attendance at a constituent's special event
 1933 or family occasion, such as the birth of a child, graduation,
 1934 wedding, or funeral; personal expenses incurred by the elected
 1935 public official in connection with attending a constituent
 1936 meeting or event where public policy is discussed, if such
 1937 meetings or events are limited to no more than once a week; ~~;~~ or
 1938 expenses incurred in the operation of the elected public
 1939 official's ~~his or her~~ office, including the employment of
 1940 additional staff. The funds may be deposited in a savings
 1941 account; however, all deposits, withdrawals, and interest earned
 1942 thereon shall be reported at the appropriate reporting period.
 1943 If a candidate is reelected to office or elected to another

Page 67 of 89

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

578-02814-13

20131382c2

1944 office and has funds remaining in his or her office account, he
 1945 or she may transfer surplus campaign funds to the office
 1946 account. At no time may the funds in the office account exceed
 1947 the limitation imposed by this subsection. Upon leaving public
 1948 office, any person who has funds in an office account pursuant
 1949 to this subsection remaining on deposit shall give such funds to
 1950 a charitable organization that meets ~~or organizations which meet~~
 1951 the requirements of s. 501(c)(3) of the Internal Revenue Code
 1952 or, in the case of a state officer, to the state to be deposited
 1953 in the General Revenue Fund or, in the case of an officer of a
 1954 political subdivision, to the political subdivision to be
 1955 deposited in the general fund thereof.

1956 (6) (a) For purposes of this subsection, the term "same
 1957 office" with respect to legislative office means an office in
 1958 the same legislative body, irrespective of district number or
 1959 designation or geographic boundary.

1960 (b) A candidate elected to state office or a candidate who
 1961 will be elected to state office by virtue of his or her being
 1962 unopposed after candidate qualifying ends, may retain up to
 1963 \$20,000 in his or her campaign account, or in an interest-
 1964 bearing account or certificate of deposit, for use in his or her
 1965 next campaign for the same office, in addition to the
 1966 disposition methods provided in subsections (4) and (5). All
 1967 requirements applicable to candidate campaign accounts under
 1968 this chapter, including disclosure requirements applicable to
 1969 candidate campaign accounts, limitations on expenditures, and
 1970 limitations on contributions, apply to any retained funds.

1971 (c) If a candidate who has retained funds under this
 1972 subsection does not qualify as a candidate for reelection to the

Page 68 of 89

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

578-02814-13 20131382c2

1973 same office, all retained funds shall be disposed of as
 1974 otherwise required by this section or s. 106.11(5) within 90
 1975 days after the last day of candidate qualifying for that office.
 1976 Requirements in this section applicable to the disposal of
 1977 surplus funds, including reporting requirements, are applicable
 1978 to the disposal of retained funds.

1979 (7)(6) Before ~~Prior to~~ disposing of funds pursuant to
 1980 subsection (4), ~~or~~ transferring funds into an office account
 1981 pursuant to subsection (5), or retaining funds for reelection
 1982 pursuant to subsection (6), any candidate who filed an oath
 1983 stating that he or she was unable to pay the ~~election assessment~~
 1984 ~~or~~ fee for verification of petition signatures without imposing
 1985 an undue burden on his or her personal resources or on resources
 1986 otherwise available to him or her, ~~or who filed both such oaths,~~
 1987 ~~or who qualified by the petition process and was not required to~~
 1988 ~~pay an election assessment,~~ shall reimburse the state or local
 1989 governmental entity, whichever is applicable, for such waived
 1990 ~~assessment or fee or both. Such reimbursement shall be made~~
 1991 ~~first for the cost of petition verification and then, if funds~~
 1992 ~~are remaining, for the amount of the election assessment. If~~
 1993 ~~there are insufficient funds in the account to pay the full~~
 1994 ~~amount of either the assessment or the fee or both, the~~
 1995 ~~remaining funds shall be disbursed in the above manner until no~~
 1996 ~~funds remain. All funds disbursed pursuant to this subsection~~
 1997 ~~shall be remitted to the qualifying officer. Any reimbursement~~
 1998 ~~for petition verification costs which are reimbursable by the~~
 1999 ~~state shall be forwarded by the qualifying officer to the state~~
 2000 ~~for deposit in the General Revenue Fund. All reimbursements for~~
 2001 ~~the amount of the election assessment shall be forwarded by the~~

Page 69 of 89

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

578-02814-13 20131382c2

2002 ~~qualifying officer to the Department of State for deposit in the~~
 2003 ~~General Revenue Fund.~~

2004 (8) (a) (7) (a) Any candidate required to dispose of campaign
 2005 funds pursuant to this section shall do so within the time
 2006 required by this section and ~~shall~~, on or before the date by
 2007 which such disposition is to have been made, shall file with the
 2008 officer with whom reports are required to be filed pursuant to
 2009 s. 106.07 a form prescribed by the Division of Elections
 2010 listing:

2011 1. The name and address of each person or unit of
 2012 government to whom any of the funds were distributed and the
 2013 amounts thereof;

2014 2. The name and address of each person to whom an
 2015 expenditure was made, together with the amount thereof and
 2016 purpose therefor; ~~and~~

2017 3. The amount of such funds transferred to an office
 2018 account by the candidate, together with the name and address of
 2019 the bank, savings and loan association, or credit union in which
 2020 the office account is located; and

2021 4. The amount of such funds retained pursuant to subsection
 2022 (6), together with the name and address of the bank, savings and
 2023 loan association, or credit union in which the retained funds
 2024 are located.

2025
 2026 Such report shall be signed by the candidate and the campaign
 2027 treasurer and certified as true and correct pursuant to s.
 2028 106.07.

2029 (b) The filing officer shall notify each candidate at least
 2030 14 days before the date the report is due.

Page 70 of 89

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

578-02814-13

20131382c2

2031 (c) Any candidate failing to file a report on the
 2032 designated due date shall be subject to a fine as provided in s.
 2033 106.07 for submitting late termination reports.

2034 ~~(9)(8)~~ Any candidate elected to office who transfers
 2035 surplus campaign funds into an office account pursuant to
 2036 subsection (5) shall file a report on the 10th day following the
 2037 end of each calendar quarter until the account is closed. Such
 2038 reports shall contain the name and address of each person to
 2039 whom any disbursement of funds was made, together with the
 2040 amount thereof and the purpose therefor, and the name and
 2041 address of any person from whom the elected candidate received
 2042 any refund or reimbursement and the amount thereof. Such reports
 2043 shall be on forms prescribed by the Division of Elections,
 2044 signed by the elected candidate, certified as true and correct,
 2045 and filed with the officer with whom campaign reports were filed
 2046 pursuant to s. 106.07(2).

2047 ~~(10)(9)~~ Any candidate, or any person on behalf of a
 2048 candidate, who accepts contributions after such candidate has
 2049 withdrawn his or her candidacy, after the candidate has become
 2050 an unopposed candidate, or after the candidate has been
 2051 eliminated as a candidate or elected to office commits a
 2052 misdemeanor of the first degree, punishable as provided in s.
 2053 775.082 or s. 775.083.

2054 ~~(11)(10)~~ Any candidate who is required by the provisions of
 2055 this section to dispose of funds in his or her campaign account
 2056 and who fails to dispose of the funds in the manner provided in
 2057 this section commits a misdemeanor of the first degree,
 2058 punishable as provided in s. 775.082 or s. 775.083.

2059 Section 16. Section 106.29, Florida Statutes, is reenacted

578-02814-13

20131382c2

2060 and amended to read:

2061 106.29 Reports by political parties and affiliated party
 2062 committees; restrictions on contributions and expenditures;
 2063 penalties.-

2064 (1) (a) The state executive committee and each county
 2065 executive committee of each political party and any affiliated
 2066 party committee regulated by chapter 103 shall file regular
 2067 reports of all contributions received and all expenditures made
 2068 by such committee. However, the reports ~~may shall~~ not include
 2069 contributions and expenditures that are reported to the Federal
 2070 Election Commission.

2071 (b) Each state executive committee and affiliated party
 2072 committee shall file regular reports with the Division of
 2073 Elections. Such reports must contain the same information as
 2074 reports required of candidates by s. 106.07 and must be filed at
 2075 the same times and subject to the same filing conditions
 2076 established by s. 106.07(1) and (2) for statewide candidate
 2077 reports filed with the division. Each county executive committee
 2078 shall file reports with the supervisor of elections in the
 2079 county in which such committee exists. Such reports must contain
 2080 the same information as reports required of candidates by s.
 2081 106.07 and must be filed at the same times and subject to the
 2082 same filing conditions established by s. 106.07(1) and (2) for
 2083 county candidate reports filed with the supervisor of elections.
 2084 In addition, when a special election is called to fill a vacancy
 2085 in office, each state executive committee, each affiliated party
 2086 committee, and each county executive committee making
 2087 contributions or expenditures to influence the results of the
 2088 special election or the preceding special primary election must

578-02814-13 20131382c2

2089 file campaign treasurers' reports on the dates set by the
 2090 Department of State pursuant to s. 100.111. ~~Such reports shall~~
 2091 ~~contain the same information as do reports required of~~
 2092 ~~candidates by s. 106.07 and shall be filed on the 10th day~~
 2093 ~~following the end of each calendar quarter, except that, during~~
 2094 ~~the period from the last day for candidate qualifying until the~~
 2095 ~~general election, such reports shall be filed on the Friday~~
 2096 ~~immediately preceding each special primary election, special~~
 2097 ~~election, primary election, and general election.~~

2098 (c) In addition to the reports filed under this section,
 2099 the state executive committee, each county executive committee,
 2100 and each affiliated party committee shall file a copy of each
 2101 prior written acceptance of an in-kind contribution given by the
 2102 committee during the preceding calendar quarter as required
 2103 under s. 106.08(6). ~~Each state executive committee and~~
 2104 ~~affiliated party committee shall file its reports with the~~
 2105 ~~Division of Elections. Each county executive committee shall~~
 2106 ~~file its reports with the supervisor of elections in the county~~
 2107 ~~in which such committee exists.~~

2108 (d) Any state or county executive committee or affiliated
 2109 party committee failing to file a report on the designated due
 2110 date ~~is shall be~~ subject to a fine as provided in subsection
 2111 (3). ~~A No~~ separate fine ~~may not shall~~ be assessed for failure to
 2112 file a copy of any report required by this section.

2113 (2) The chair and treasurer of each state or county
 2114 executive committee shall certify as to the correctness of each
 2115 report filed by them on behalf of such committee. The leader and
 2116 treasurer of each affiliated party committee under s. 103.092
 2117 shall certify as to the correctness of each report filed by them

Page 73 of 89

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

578-02814-13 20131382c2

2118 on behalf of such committee. Any committee chair, leader, or
 2119 treasurer who certifies the correctness of any report while
 2120 knowing that such report is incorrect, false, or incomplete
 2121 commits a felony of the third degree, punishable as provided in
 2122 s. 775.082, s. 775.083, or s. 775.084.

2123 (3) (a) A Any state or county executive committee or
 2124 affiliated party committee ~~that fails failing~~ to file a report
 2125 on the designated due date ~~is shall be~~ subject to a fine as
 2126 provided in paragraph (b) for each late day. The fine shall be
 2127 assessed by the filing officer, and the moneys collected shall
 2128 be deposited in the General Revenue Fund.

2129 (b) Upon determining that a report is late, the filing
 2130 officer shall immediately notify the chair of the executive
 2131 committee or the leader of the affiliated party committee as
 2132 defined in s. 103.092 as to the failure to file a report by the
 2133 designated due date and that a fine is being assessed for each
 2134 late day. The fine ~~is shall be~~ \$1,000 for a state executive
 2135 committee, \$1,000 for an affiliated party committee, and \$50 for
 2136 a county executive committee, per day for each late day, not to
 2137 exceed 25 percent of the total receipts or expenditures,
 2138 whichever is greater, for the period covered by the late report.
 2139 However, if an executive committee or an affiliated party
 2140 committee fails to file a report on the Friday immediately
 2141 preceding the special election or general election, the fine ~~is~~
 2142 ~~shall be~~ \$10,000 per day for each day a state executive
 2143 committee is late, \$10,000 per day for each day an affiliated
 2144 party committee is late, and \$500 per day for each day a county
 2145 executive committee is late. Upon receipt of the report, the
 2146 filing officer shall determine the amount of the fine which is

Page 74 of 89

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

578-02814-13 20131382c2

2147 due and shall notify the chair or leader as defined in s.
 2148 103.092. Notice is deemed complete upon proof of delivery of
 2149 written notice to the mailing or street address on record with
 2150 the filing officer. The filing officer shall determine the
 2151 amount of the fine due based upon the earliest of the following:
 2152 1. When the report is actually received by such officer.
 2153 2. When the report is postmarked.
 2154 3. When the certificate of mailing is dated.
 2155 4. When the receipt from an established courier company is
 2156 dated.
 2157 5. When the electronic receipt issued pursuant to s.
 2158 106.0705 is dated.
 2159
 2160 Such fine shall be paid to the filing officer within 20 days
 2161 after receipt of the notice of payment due, unless appeal is
 2162 made to the Florida Elections Commission pursuant to paragraph
 2163 (c). An officer or member of an executive committee is not ~~shall~~
 2164 ~~not be~~ personally liable for such fine.
 2165 (c) The chair of an executive committee or the leader of an
 2166 affiliated party committee as defined in s. 103.092 may appeal
 2167 or dispute the fine, based upon unusual circumstances
 2168 surrounding the failure to file on the designated due date, and
 2169 may request and is ~~shall be~~ entitled to a hearing before the
 2170 Florida Elections Commission, which has ~~shall have~~ the authority
 2171 to waive the fine in whole or in part. Any such request shall be
 2172 made within 20 days after receipt of the notice of payment due.
 2173 In such case, the chair of the executive committee or the leader
 2174 of the affiliated party committee as defined in s. 103.092
 2175 shall, within the 20-day period, notify the filing officer in

Page 75 of 89

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

578-02814-13 20131382c2

2176 writing of his or her intention to bring the matter before the
 2177 commission.
 2178 (d) The appropriate filing officer shall notify the Florida
 2179 Elections Commission of the repeated late filing by an executive
 2180 committee or affiliated party committee, the failure of an
 2181 executive committee or affiliated party committee to file a
 2182 report after notice, or the failure to pay the fine imposed.
 2183 (4) Any contribution received by a state or county
 2184 executive committee or affiliated party committee less than 5
 2185 days before an election may ~~shall~~ not be used or expended in
 2186 behalf of any candidate, issue, affiliated party committee, or
 2187 political party participating in such election.
 2188 (5) A ~~No~~ state or county executive committee or affiliated
 2189 party committee, in the furtherance of any candidate or
 2190 political party, directly or indirectly, may not ~~shall~~ give,
 2191 pay, or expend any money, give or pay anything of value,
 2192 authorize any expenditure, or become pecuniarily liable for any
 2193 expenditure prohibited by this chapter. However, the
 2194 contribution of funds by one executive committee to another or
 2195 to established party organizations for legitimate party or
 2196 campaign purposes is not prohibited, but all such contributions
 2197 shall be recorded and accounted for in the reports of the
 2198 contributor and recipient.
 2199 (6) (a) The national, state, and county executive committees
 2200 of a political party and affiliated party committees may not
 2201 contribute to any candidate any amount in excess of the limits
 2202 contained in s. 106.08(2), and all contributions required to be
 2203 reported under s. 106.08(2) by the national executive committee
 2204 of a political party shall be reported by the state executive

Page 76 of 89

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

578-02814-13 20131382c2

2205 committee of that political party.

2206 (b) A violation of the contribution limits contained in s.
2207 106.08(2) is a misdemeanor of the first degree, punishable as
2208 provided in s. 775.082 or s. 775.083. A civil penalty equal to
2209 three times the amount in excess of the limits contained in s.
2210 106.08(2) shall be assessed against any executive committee
2211 found in violation thereof.

2212 Section 17. By December 1, 2013, the Division of Elections
2213 shall submit a proposal to the President of the Senate and the
2214 Speaker of the House of Representatives for a mandatory
2215 statewide electronic filing system for all state and local
2216 campaign filings required by s. 106.07, s. 106.0703, or s.
2217 106.29.

2218 Section 18. Subsection (3) of section 101.62, Florida
2219 Statutes, is amended to read:

2220 101.62 Request for absentee ballots.—

2221 (3) For each request for an absentee ballot received, the
2222 supervisor shall record the date the request was made, the date
2223 the absentee ballot was delivered to the voter or the voter's
2224 designee or the date the absentee ballot was delivered to the
2225 post office or other carrier, the date the ballot was received
2226 by the supervisor, and such other information he or she may deem
2227 necessary. This information shall be provided in electronic
2228 format as provided by rule adopted by the division. The
2229 information shall be updated and made available no later than 8
2230 a.m. of each day, including weekends, beginning 60 days before
2231 the primary until 15 days after the general election and shall
2232 be contemporaneously provided to the division. This information
2233 shall be confidential and exempt from the provisions of s.

578-02814-13 20131382c2

2234 119.07(1) and shall be made available to or reproduced only for
2235 the voter requesting the ballot, a canvassing board, an election
2236 official, a political party or official thereof, a candidate who
2237 has filed qualification papers and is opposed in an upcoming
2238 election, and registered political committees ~~or registered~~
2239 ~~committees of continuous existence~~, for political purposes only.

2240 Section 19. Paragraph (a) of subsection (4) of section
2241 102.031, Florida Statutes, is amended to read:

2242 102.031 Maintenance of good order at polls; authorities;
2243 persons allowed in polling rooms and early voting areas;
2244 unlawful solicitation of voters.—

2245 (4) (a) No person, political committee, ~~committee of~~
2246 ~~continuous existence~~, or other group or organization may solicit
2247 voters inside the polling place or within 100 feet of the
2248 entrance to any polling place, or polling room where the polling
2249 place is also a polling room, or early voting site. Before the
2250 opening of the polling place or early voting site, the clerk or
2251 supervisor shall designate the no-solicitation zone and mark the
2252 boundaries.

2253 Section 20. Subsection (2) of section 106.087, Florida
2254 Statutes, is amended to read:

2255 106.087 Independent expenditures; contribution limits;
2256 restrictions on political parties and, political committees, ~~and~~
2257 ~~committees of continuous existence~~.—

2258 (2) (a) Any political committee ~~or committee of continuous~~
2259 ~~existence~~ that accepts the use of public funds, equipment,
2260 personnel, or other resources to collect dues from its members
2261 agrees not to make independent expenditures in support of or
2262 opposition to a candidate or elected public official. However,

578-02814-13 20131382c2

2263 expenditures may be made for the sole purpose of jointly
2264 endorsing three or more candidates.

2265 (b) Any political committee ~~or committee of continuous~~
2266 ~~existence~~ that violates this subsection is liable for a civil
2267 fine of up to \$5,000 to be determined by the Florida Elections
2268 Commission or the entire amount of the expenditures, whichever
2269 is greater.

2270 Section 21. Subsection (3) of section 106.12, Florida
2271 Statutes, is amended to read:

2272 106.12 Petty cash funds allowed.-

2273 (3) The petty cash fund so provided may ~~shall~~ be spent only
2274 in amounts less than \$100 and only for office supplies,
2275 transportation expenses, and other necessities. Petty cash may
2276 ~~shall~~ not be used for the purchase of time, space, or services
2277 from communications media as defined in s. 106.011 ~~106.011(13)~~.

2278 Section 22. Paragraph (b) of subsection (3) of section
2279 106.147, Florida Statutes, is amended to read:

2280 106.147 Telephone solicitation; disclosure requirements;
2281 prohibitions; exemptions; penalties.-

2282 (3)

2283 (b) For purposes of paragraph (a), the term "person"
2284 includes any candidate; any officer of any political committee,
2285 ~~committee of continuous existence~~, affiliated party committee,
2286 or political party executive committee; any officer, partner,
2287 attorney, or other representative of a corporation, partnership,
2288 or other business entity; and any agent or other person acting
2289 on behalf of any candidate, political committee, ~~committee of~~
2290 ~~continuous existence~~, affiliated party committee, political
2291 party executive committee, or corporation, partnership, or other

578-02814-13 20131382c2

2292 business entity.

2293 Section 23. Section 106.17, Florida Statutes, is amended to
2294 read:

2295 106.17 Polls and surveys relating to candidacies.-Any
2296 candidate, political committee, ~~committee of continuous~~
2297 ~~existence~~, electioneering communication organization, affiliated
2298 party committee, or state or county executive committee of a
2299 political party may authorize or conduct a political poll,
2300 survey, index, or measurement of any kind relating to candidacy
2301 for public office so long as the candidate, political committee,
2302 ~~committee of continuous existence~~, electioneering communication
2303 organization, affiliated party committee, or political party
2304 maintains complete jurisdiction over the poll in all its
2305 aspects. State and county executive committees of a political
2306 party or an affiliated party committee may authorize and conduct
2307 political polls for the purpose of determining the viability of
2308 potential candidates. Such poll results may be shared with
2309 potential candidates, and expenditures incurred by state and
2310 county executive committees or an affiliated party committee for
2311 potential candidate polls are not contributions to the potential
2312 candidates.

2313 Section 24. Subsection (2) of section 106.23, Florida
2314 Statutes, is amended to read:

2315 106.23 Powers of the Division of Elections.-

2316 (2) The Division of Elections shall provide advisory
2317 opinions when requested by any supervisor of elections,
2318 candidate, local officer having election-related duties,
2319 political party, affiliated party committee, political
2320 committee, ~~committee of continuous existence~~, or other person or

578-02814-13

20131382c2

2321 organization engaged in political activity, relating to any
 2322 provisions or possible violations of Florida election laws with
 2323 respect to actions such supervisor, candidate, local officer
 2324 having election-related duties, political party, affiliated
 2325 party committee, committee, person, or organization has taken or
 2326 proposes to take. Requests for advisory opinions must be
 2327 submitted in accordance with rules adopted by the Department of
 2328 State. A written record of all such opinions issued by the
 2329 division, sequentially numbered, dated, and indexed by subject
 2330 matter, shall be retained. A copy shall be sent to said person
 2331 or organization upon request. Any such person or organization,
 2332 acting in good faith upon such an advisory opinion, shall not be
 2333 subject to any criminal penalty provided for in this chapter.
 2334 The opinion, until amended or revoked, shall be binding on any
 2335 person or organization who sought the opinion or with reference
 2336 to whom the opinion was sought, unless material facts were
 2337 omitted or misstated in the request for the advisory opinion.

2338 Section 25. Subsections (2) and (3) of section 106.265,
 2339 Florida Statutes, are amended to read:

2340 106.265 Civil penalties.—

2341 (2) In determining the amount of such civil penalties, the
 2342 commission or administrative law judge shall consider, among
 2343 other mitigating and aggravating circumstances:

2344 (a) The gravity of the act or omission;

2345 (b) Any previous history of similar acts or omissions;

2346 (c) The appropriateness of such penalty to the financial
 2347 resources of the person, political committee, ~~committee of~~
 2348 ~~continuous existence~~, affiliated party committee, electioneering
 2349 communications organization, or political party; and

578-02814-13

20131382c2

2350 (d) Whether the person, political committee, ~~committee of~~
 2351 ~~continuous existence~~, affiliated party committee, electioneering
 2352 communications organization, or political party has shown good
 2353 faith in attempting to comply with the provisions of this
 2354 chapter or chapter 104.

2355 (3) If any person, political committee, ~~committee of~~
 2356 ~~continuous existence~~, affiliated party committee, electioneering
 2357 communications organization, or political party fails or refuses
 2358 to pay to the commission any civil penalties assessed pursuant
 2359 to the provisions of this section, the commission shall be
 2360 responsible for collecting the civil penalties resulting from
 2361 such action.

2362 Section 26. Subsection (2) of section 106.27, Florida
 2363 Statutes, is amended to read:

2364 106.27 Determinations by commission; legal disposition.—

2365 (2) Civil actions may be brought by the commission for
 2366 relief, including permanent or temporary injunctions,
 2367 restraining orders, or any other appropriate order for the
 2368 imposition of civil penalties provided by this chapter. Such
 2369 civil actions shall be brought by the commission in the
 2370 appropriate court of competent jurisdiction, and the venue shall
 2371 be in the county in which the alleged violation occurred or in
 2372 which the alleged violator or violators are found, reside, or
 2373 transact business. Upon a proper showing that such person,
 2374 political committee, ~~committee of continuous existence~~,
 2375 affiliated party committee, or political party has engaged, or
 2376 is about to engage, in prohibited acts or practices, a permanent
 2377 or temporary injunction, restraining order, or other order shall
 2378 be granted without bond by such court, and the civil fines

578-02814-13 20131382c2

2379 provided by this chapter may be imposed.

2380 Section 27. Subsection (3) of section 106.32, Florida
2381 Statutes, is amended to read:

2382 106.32 Election Campaign Financing Trust Fund.—

2383 (3) Proceeds from assessments pursuant to ss. ~~106.04,~~
2384 106.07, and 106.29 shall be deposited into the Election Campaign
2385 Financing Trust Fund as designated in those sections.

2386 Section 28. Section 106.33, Florida Statutes, is amended to
2387 read:

2388 106.33 Election campaign financing; eligibility.—Each
2389 candidate for the office of Governor or member of the Cabinet
2390 who desires to receive contributions from the Election Campaign
2391 Financing Trust Fund ~~shall~~, upon qualifying for office, shall
2392 file a request for such contributions with the filing officer on
2393 forms provided by the Division of Elections. If a candidate
2394 requesting contributions from the fund desires to have such
2395 funds distributed by electronic fund transfers, the request
2396 shall include information necessary to implement that procedure.
2397 For the purposes of ss. 106.30-106.36, the respective candidates
2398 running for Governor and Lieutenant Governor on the same ticket
2399 shall be considered as a single candidate. To be eligible to
2400 receive contributions from the fund, a candidate may not be an
2401 unopposed candidate as defined in s. 106.011 ~~106.011(15)~~ and
2402 must:

2403 (1) Agree to abide by the expenditure limits provided in s.
2404 106.34.

2405 (2) (a) Raise contributions as follows:

2406 1. One hundred fifty thousand dollars for a candidate for
2407 Governor.

578-02814-13 20131382c2

2408 2. One hundred thousand dollars for a candidate for Cabinet
2409 office.

2410 (b) Contributions from individuals who at the time of
2411 contributing are not state residents may not be used to meet the
2412 threshold amounts in paragraph (a). For purposes of this
2413 paragraph, any person validly registered to vote in this state
2414 shall be considered a state resident.

2415 (3) Limit loans or contributions from the candidate's
2416 personal funds to \$25,000 and contributions from national,
2417 state, and county executive committees of a political party to
2418 \$250,000 in the aggregate, which loans or contributions do ~~shall~~
2419 not qualify for meeting the threshold amounts in subsection (2).

2420 (4) Submit to a postelection audit of the campaign account
2421 by the division.

2422 Section 29. Section 111.075, Florida Statutes, is amended
2423 to read:

2424 111.075 Elected officials; prohibition concerning certain
2425 committees.—Elected officials are prohibited from being employed
2426 by, or acting as a consultant for compensation to, a political
2427 committee ~~or committee of continuous existence~~.

2428 Section 30. Subsections (3) and (4) and paragraph (a) of
2429 subsection (5) of section 112.3148, Florida Statutes, are
2430 amended to read:

2431 112.3148 Reporting and prohibited receipt of gifts by
2432 individuals filing full or limited public disclosure of
2433 financial interests and by procurement employees.—

2434 (3) A reporting individual or procurement employee is
2435 prohibited from soliciting any gift from a political committee
2436 ~~or committee of continuous existence~~, as defined in s. 106.011,

578-02814-13 20131382c2

2437 or from a lobbyist who lobbies the reporting individual's or
 2438 procurement employee's agency, or the partner, firm, employer,
 2439 or principal of such lobbyist, where such gift is for the
 2440 personal benefit of the reporting individual or procurement
 2441 employee, another reporting individual or procurement employee,
 2442 or any member of the immediate family of a reporting individual
 2443 or procurement employee.

2444 (4) A reporting individual or procurement employee or any
 2445 other person on his or her behalf is prohibited from knowingly
 2446 accepting, directly or indirectly, a gift from a political
 2447 committee ~~or committee of continuous existence~~, as defined in s.
 2448 106.011, or from a lobbyist who lobbies the reporting
 2449 individual's or procurement employee's agency, or directly or
 2450 indirectly on behalf of the partner, firm, employer, or
 2451 principal of a lobbyist, if he or she knows or reasonably
 2452 believes that the gift has a value in excess of \$100; however,
 2453 such a gift may be accepted by such person on behalf of a
 2454 governmental entity or a charitable organization. If the gift is
 2455 accepted on behalf of a governmental entity or charitable
 2456 organization, the person receiving the gift shall not maintain
 2457 custody of the gift for any period of time beyond that
 2458 reasonably necessary to arrange for the transfer of custody and
 2459 ownership of the gift.

2460 (5) (a) A political committee ~~or a committee of continuous~~
 2461 ~~existence~~, as defined in s. 106.011; a lobbyist who lobbies a
 2462 reporting individual's or procurement employee's agency; the
 2463 partner, firm, employer, or principal of a lobbyist; or another
 2464 on behalf of the lobbyist or partner, firm, principal, or
 2465 employer of the lobbyist is prohibited from giving, either

578-02814-13 20131382c2

2466 directly or indirectly, a gift that has a value in excess of
 2467 \$100 to the reporting individual or procurement employee or any
 2468 other person on his or her behalf; however, such person may give
 2469 a gift having a value in excess of \$100 to a reporting
 2470 individual or procurement employee if the gift is intended to be
 2471 transferred to a governmental entity or a charitable
 2472 organization.

2473 Section 31. Subsections (3) and (4) of section 112.3149,
 2474 Florida Statutes, are amended to read:

2475 112.3149 Solicitation and disclosure of honoraria.—

2476 (3) A reporting individual or procurement employee is
 2477 prohibited from knowingly accepting an honorarium from a
 2478 political committee ~~or committee of continuous existence~~, as
 2479 defined in s. 106.011, from a lobbyist who lobbies the reporting
 2480 individual's or procurement employee's agency, or from the
 2481 employer, principal, partner, or firm of such a lobbyist.

2482 (4) A political committee ~~or committee of continuous~~
 2483 ~~existence~~, as defined in s. 106.011, a lobbyist who lobbies a
 2484 reporting individual's or procurement employee's agency, or the
 2485 employer, principal, partner, or firm of such a lobbyist is
 2486 prohibited from giving an honorarium to a reporting individual
 2487 or procurement employee.

2488 Section 32. Subsection (4) of section 1004.28, Florida
 2489 Statutes, is amended to read:

2490 1004.28 Direct-support organizations; use of property;
 2491 board of directors; activities; audit; facilities.—

2492 (4) ACTIVITIES; RESTRICTION.—A university direct-support
 2493 organization is prohibited from giving, either directly or
 2494 indirectly, any gift to a political committee ~~or committee of~~

578-02814-13 20131382c2

2495 ~~continuous existence~~ as defined in s. 106.011 for any purpose
 2496 other than those certified by a majority roll call vote of the
 2497 governing board of the direct-support organization at a
 2498 regularly scheduled meeting as being directly related to the
 2499 educational mission of the university.

2500 Section 33. Paragraph (d) of subsection (4) of section
 2501 1004.70, Florida Statutes, is amended to read:

2502 1004.70 Florida College System institution direct-support
 2503 organizations.-

2504 (4) ACTIVITIES; RESTRICTIONS.-

2505 (d) A Florida College System institution direct-support
 2506 organization is prohibited from giving, either directly or
 2507 indirectly, any gift to a political committee ~~or committee of~~
 2508 ~~continuous existence~~ as defined in s. 106.011 for any purpose
 2509 other than those certified by a majority roll call vote of the
 2510 governing board of the direct-support organization at a
 2511 regularly scheduled meeting as being directly related to the
 2512 educational mission of the Florida College System institution.

2513 Section 34. Paragraph (c) of subsection (4) of section
 2514 1004.71, Florida Statutes, is amended to read:

2515 1004.71 Statewide Florida College System institution
 2516 direct-support organizations.-

2517 (4) RESTRICTIONS.-

2518 (c) A statewide Florida College System institution direct-
 2519 support organization is prohibited from giving, either directly
 2520 or indirectly, any gift to a political committee ~~or committee of~~
 2521 ~~continuous existence~~ as defined in s. 106.011 for any purpose
 2522 other than those certified by a majority roll call vote of the
 2523 governing board of the direct-support organization at a

578-02814-13 20131382c2

2524 regularly scheduled meeting as being directly related to the
 2525 educational mission of the State Board of Education.

2526 Section 35. For the purpose of incorporating the amendment
 2527 made by this act into section 106.08, Florida Statutes, in a
 2528 reference thereto, subsection (2) of section 106.075, Florida
 2529 Statutes, is reenacted to read:

2530 106.075 Elected officials; report of loans made in year
 2531 preceding election; limitation on contributions to pay loans.-

2532 (2) Any person who makes a contribution to an individual to
 2533 pay all or part of a loan incurred, in the 12 months preceding
 2534 the election, to be used for the individual's campaign, may not
 2535 contribute more than the amount which is allowed in s.
 2536 106.08(1).

2537 Section 36. For the purpose of incorporating the amendments
 2538 made by this act to sections 106.08 and 106.11, Florida
 2539 Statutes, in references thereto, section 106.19, Florida
 2540 Statutes, is reenacted to read:

2541 106.19 Violations by candidates, persons connected with
 2542 campaigns, and political committees.-

2543 (1) Any candidate; campaign manager, campaign treasurer, or
 2544 deputy treasurer of any candidate; committee chair, vice chair,
 2545 campaign treasurer, deputy treasurer, or other officer of any
 2546 political committee; agent or person acting on behalf of any
 2547 candidate or political committee; or other person who knowingly
 2548 and willfully:

2549 (a) Accepts a contribution in excess of the limits
 2550 prescribed by s. 106.08;

2551 (b) Fails to report any contribution required to be
 2552 reported by this chapter;

578-02814-13

20131382c2

2553 (c) Falsely reports or deliberately fails to include any
2554 information required by this chapter; or

2555 (d) Makes or authorizes any expenditure in violation of s.
2556 106.11(4) or any other expenditure prohibited by this chapter;

2557
2558 is guilty of a misdemeanor of the first degree, punishable as
2559 provided in s. 775.082 or s. 775.083.

2560 (2) Any candidate, campaign treasurer, or deputy treasurer;
2561 any chair, vice chair, or other officer of any political
2562 committee; any agent or person acting on behalf of any candidate
2563 or political committee; or any other person who violates
2564 paragraph (1) (a), paragraph (1) (b), or paragraph (1) (d) shall be
2565 subject to a civil penalty equal to three times the amount
2566 involved in the illegal act. Such penalty may be in addition to
2567 the penalties provided by subsection (1) and shall be paid into
2568 the General Revenue Fund of this state.

2569 (3) A political committee sponsoring a constitutional
2570 amendment proposed by initiative which submits a petition form
2571 gathered by a paid petition circulator which does not provide
2572 the name and address of the paid petition circulator on the form
2573 is subject to the civil penalties prescribed in s. 106.265.

2574 (4) Except as otherwise expressly stated, the failure by a
2575 candidate to comply with the requirements of this chapter has no
2576 effect upon whether the candidate has qualified for the office
2577 the candidate is seeking.

2578 Section 37. Except as otherwise expressly provided in this
2579 act and except for this section, which shall take effect upon
2580 becoming a law, this act shall take effect November 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

01/09/2013

Meeting Date

Topic _____

Bill Number 1382
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Campaign Financing

Bill Number SB 1382

(if applicable)

Name Jessica Lowe-Minor

Amendment Barcode _____

(if applicable)

Job Title Executive Director

Address 407 Vinewood Ride

Phone 850-228-3646

Street

Tallahassee

FL

32303

E-mail LWVF executive director @

City

State

Zip

gmail.com

Speaking: For Against Information

Representing League of Women Voters of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/2013

Meeting Date

Topic Campaign Finance Reform

Bill Number SB 1382
(if applicable)

Name Brad Ashwell

Amendment Barcode _____
(if applicable)

Job Title lobbyist

Address 1536 Chulivane
Street

Phone 850-294-1008

Tallahassee FL 32301
City State Zip

E-mail bradashwell@gmail.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/CS/SB 600

INTRODUCER: Rules Committee; Community Affairs Committee; Ethics and Elections Committee and Senator Latvala

SUBJECT: Elections

DATE: April 9, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Fav/CS
2.	Anderson	Yeatman	CA	Fav/CS
3.	Carlton	Phelps	RC	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/CS/SB 600 is an omnibus election administration bill containing the following major provisions:

- Allows late voter registration for military personnel who have returned from a combat zone or forward-deployed area to register to vote until the Friday before the election.
- Requires each Supervisor of Elections to submit an election preparation report to the Secretary of State three months prior to a general election.
- Changes the primary date from 12 weeks before the general election to 10 weeks before the general election.
- Provides that the first ballot summary for joint resolutions amending or revising the State Constitution may not exceed 75 words.
- Removes the provisions permitting use of the full text of a Constitutional amendment or revision as a ballot statement.
- Establishes a process by which the Department of State ("Department") can approve or disapprove electronic or electromechanical voting equipment which:
 - Requires designation of a registered agent(s);

- Defines defect, standards, and vendor as they pertain to voting system defects.
- Requires a vendor to file a written disclosure with the Department, and provides what constitutes a cure of a defect;
- Requires a vendor to file a new disclosure with the Department if a vendor becomes aware of a defect within a specified period;
- Authorizes the Department to suspend use and/or sales and leases of defective systems;
- Authorizes the Department to undertake certain investigations and submit a written report thereon;
- Permits imposition of certain penalties under specified circumstances; and
- Provides that all proceedings are exempt from the Administrative Procedures Act in ch. 120, F.S.
- Permits an automated, independent audit and specifies how such audit will be conducted.
- Revises the absentee ballot process as follows:
 - Specifies that a request for an absentee ballot that is not being sent to a residential address must be made in writing and signed by the elector;
 - Prohibits delivery of absentee ballots on election day, unless an emergency exists and the requestor provides an affidavit;
 - Reinstates the witness requirement pertaining to the Voter's Certificate;
 - Provides that a candidate cannot be a witness;
 - Amends the conditions under which an overseas absentee ballot will be counted;
 - Requires a legible signature and legible address on the Voter's Certificate; and,
 - Provides an opportunity for voters to sign an absentee ballot submitted without a signature under certain circumstances.¹
- Provides additional early voting sites, hours, and days.
- Prohibits solicitation of voters within 100 feet of an office of a Supervisor of Elections where absentee ballots are requested and printed on demand for the convenience of electors who appear in person to request them.
- Revises the 100 foot no-solicitation zone provisions to specify that access by certain individuals to solicit voters outside of that zone may not be restricted.
- Permits designation of canvassing board alternates.
- Requires Supervisors of Elections to upload into their election management system the results of all early voting and absentee ballots canvassed and tabulated by the end of the early voting period by 7 p.m. on the day before the election.
- Prohibits paid ballot collectors from possessing more than 2 ballots that belong to someone other than "immediate family" and defines that term.
- Provides that an elector who requires assistance must use a person who is known to the elector before election day.
- Prohibits any individual from assisting more than 10 electors who are specially registered as requiring assistance during any election.

This bill creates ss. 100.032 and 101.56065, F.S., repeals s. 101.56075(4), F.S., and substantially amends the following sections of the Florida Statutes: ss. 97.0555, 97.061, 100.061, 101.051, 101.161, 101.5605, 101.591, 101.62, 101.64, 101.65, 101.657, 101.67, 101.68, 101.6921, 101.6923, 101.6952, 102.031, 102.141, and 104.0616.

¹ Conforming changes are also made to the provisions governing special absentee ballots and absent military and overseas voters.

II. Present Situation:

The present situation is discussed below in **Effect of Proposed Changes** in this bill analysis.

III. Effect of Proposed Changes:

Late Voter Registration

Current Situation

Currently, only individuals who have been discharged or separated from the uniformed services or the Merchant Marine, or from employment outside of the United States may register to vote during the period of time between book-closing and 5 p.m. on the Friday before an election.²

Effects of Proposed Change (Section 1)

The bill permits any member of the military who has returned from a combat zone or forward-deployed area to register between the book-closing deadline and 5 p.m. on the Friday before an election.

Election Preparation Report

Current Situation

Current law does not address this topic.

Effects of Proposed Change (Section 3)

The bill creates new s. 100.032, F.S., which requires each Supervisor of Elections to submit, at least three months before a general election, a report outlining preparations for the upcoming general election. The report must address: anticipated staffing levels during the early voting period, on election day, and after election day; and the anticipated amount of automatic tabulating equipment at each early voting site and polling place.

Primary Election Date

Current Situation

Currently, the primary date is on the Tuesday occurring 12 weeks before the general election.³

Effect of Proposed Change (Section 4)

The bill would move the primary date back to the Tuesday occurring 10 weeks before the general election.

² Section 97.0555, F.S.

³ Section 100.061, F.S.

Referenda

Current Situation

Currently, a joint resolution proposing a constitutional amendment or revision must contain one or more ballot statements which are required to be set forth in order of priority.⁴ The ballot statement must contain a title, not to exceed 15 words, and either a ballot summary that describes the chief purpose of the amendment in clear and unambiguous language or the full text of the amendment or revision.⁵ The law presumes that a ballot statement consisting of the full text of an amendment or revision is a clear and unambiguous statement of the substance and effect of the amendment or revision; that it provides fair notice to the electors of the content of the amendment or revision; and, sufficiently advises electors of the issue upon which they are to vote.⁶

Effect of Proposed Changes (Section 6)

The bill provides that the ballot statement shall consist of a ballot title of up to 15 words and a ballot summary that describes the chief purpose of the amendment or revision in clear and unambiguous language. The bill authorizes submission of multiple ballot statements and provides that the ballot statement that is the first in order of priority must be limited to a maximum of 75 words. The ballot summary for any additional ballot statements is not subject to the 75 word maximum.

The bill also removes the option to submit the full text of an amendment or revision in place of a ballot summary and removes the presumption that the full text is a clear and unambiguous statement of the substance and effect of the amendment or revision; that it provides fair notice to the electors of the content of the amendment or revision; and, sufficiently advises electors of the issue upon which they are to vote. A conforming change is made by repealing a provision requiring all equipment to be able to place the full text of an amendment or revision, with insertions and deletions, shown on the ballot.⁷

Finally, the bill clarifies that a ballot summary revised by the Attorney General to correct deficiencies identified by a court is not subject to the 75 word limitation.

Approval of Electronic and Electromechanical Voting Systems and Vendor Fines

Current Situation

The Department of State is required to adopt rules establishing the minimum standards for certification, and provisional certification, of hardware and software for electronic and

⁴ Section 101.161(3)(a), F.S.

⁵ *Id.*

⁶ Section 101.161(3)(b)3., F.S.

⁷ Section 101.56075(4), F.S., is repealed in **Section 7** of the bill.

electromechanical voting systems and review the rules every odd-numbered year.⁸ The Bureau of Voting Systems Certification is responsible for standards and certification for those systems.⁹

The Electronic Voting Systems Act¹⁰ provides for adoption of an electronic or electromechanical voting system by county commissions.¹¹ The Act lays out the process for approval of, and requirements for, electronic and electromechanical voting systems.¹² The Electronic Voting Systems Act also provides the authority to seek funds from the federal government for improving equipment and access to voting.¹³ Finally, the Act addresses conduct of an election using electronic or electromechanical voting systems.¹⁴

Effect of Proposed Changes (Sections 7 and 8)

The bill requires, prior to approval of an electronic or electromechanical voting system, that the person who submits the system for approval designate a registered agent in this state. It also requires designation of a registered agent within this state prior to entering a contract for lease or sale of such voting systems. The identity and contact information is required to be updated if it changes. For purposes of the notice requirements herein, the bill specifies that the Department's proof of delivery or attempted delivery to the last mailing address of the registered agent on file with the Department at the time of delivery or attempted delivery is valid for all notice purposes.¹⁵

The bill also addresses reporting and investigation of defects. For purposes of the bill, the term defect means:

- Any failure, fault, or flaw in an electronic or electromechanical voting system approved pursuant to s. 101.5605, F.S., which results in nonconformance with the standards in a manner that affects the timeliness or accuracy of the casting or counting of ballots; or
- Any failure or inability of the voting system manufacturer or vendor to make available or provide approved replacements of hardware or software to the counties that have purchased the approved voting system, the unavailability of which results in the system's nonconformance with the standards in a manner that affects the timeliness or accuracy of the casting or counting of ballots.

For purposes of the bill, the term 'standards' refers to the requirements in ss. 101.5606 and 101.56062, F.S., under which a voting system was approved for use in the state. The term 'vendor' is defined as a person who submits or previously submitted a voting system that was approved by the Department of State in accordance with s. 101.5605, F.S., or a person who enters into a contract for the sale or lease of a voting system to any county, or that previously entered into such a contract that has not expired.

⁸ Section 101.015, F.S.

⁹ Section 101.017, F.S.

¹⁰ Sections 101.5601-101.5614, F.S.

¹¹ Section 101.5604, F.S.

¹² Sections 101.5604-101.56062, F.S.

¹³ Sections 101.56063-101.56064, F.S.

¹⁴ Sections 101.56075-101.5614, F.S.

¹⁵ Proof of attempted delivery may not be sufficient to demonstrate notice for purposes of Due Process Clause in the 14th Amendment to the U.S. Constitution.

The bill requires that no later than December 31, 2013, and, thereafter, on January 1 of every odd-numbered year, each vendor shall file a written disclosure with the Department identifying any known defect in the voting system or the fact that there is no known defect, the effect of any defect on the operation and use of the approved voting system, and any known corrective measures to cure a defect, including, but not limited to, advisories and bulletins issued to system users. Implementation of corrective measures approved by the Department which enable a system to conform to the standards and ensure the timeliness and accuracy of the casting and counting of ballots constitutes a cure of a defect.

The bill specifies that if a vendor becomes aware of the existence of a defect, he or she must file a new disclosure with the Department within 30 days after the date the vendor determined or reasonably should have determined that the defect existed. If a vendor discloses to the Department that a defect exists, the Department may suspend all sales or leases of the voting system in the state and may suspend the use of the system in any election in the state. The Department shall provide written notice of any such suspension to each affected vendor and supervisor of elections. If the Department determines that the defect no longer exists, the Department shall lift the suspension and provide written notice to each affected vendor and supervisor of elections. If a vendor fails to file a required disclosure for a voting system previously approved by the Department, that system may not be sold, leased, or used for elections in the state until it has been submitted for examination and approval and adopted for use pursuant to s. 101.5605, F.S. The Department shall provide written notice to all supervisors of elections that the system is no longer approved.

If the Department has reasonable cause to believe a voting system approved pursuant to s. 101.5605, F.S., contains a defect either before, during, or after an election which has not been disclosed, the Department may investigate whether the voting system has a defect. If the Department determines by a preponderance of the evidence that a defect exists in the voting system, or that a vendor failed to timely disclose a defect, the Department shall provide written notice to the affected vendor and supervisors of elections. If the defect has been cured, the vendor shall provide an explanation of how the defect was cured. If after receiving a response from the vendor, the Department determines that a defect does not exist or has been cured within the timeframe established by the Department, the Department shall take no further action. The Department shall prepare a written report of any investigation conducted pursuant to this section.

If the Department determines that: a vendor failed to timely disclose a defect; or that a defect exists and a vendor has not filed a written response or has failed to cure within the timeframe established by the Department, or if the defect cannot be cured, the Department shall impose a civil penalty of \$25,000 for the defect plus an amount equal to the actual costs incurred by the Department in conducting the investigation.

If the Department finds that a defect existed the Department may suspend all sales and leases of the voting system and may suspend its use in any county in the state. The Department shall provide written notice of the suspension to each affected vendor and supervisor of elections. If the Department determines that a defect no longer exists in a voting system that has been suspended from use, the Department shall lift the suspension and authorize the sale, lease, and use of the voting system in any election in the state.

Finally, the bill specifies that this authority is supplemental to any other legal authority and that all proceedings are exempt from the Administrative Procedures Act in Ch. 120, F.S.

Voting System Audits

Current Situation

Currently, the law requires that canvassing boards (or local boards responsible for certifying an election) are required to manually audit voting systems that are used in randomly selected precincts.¹⁶ The audit must consist of a public manual tally of votes cast in a randomly selected race. The tally must include election day, absentee, early voting, provisional, and overseas ballots in at least 1 percent, but no more than 2 percent, of the randomly-selected precincts.¹⁷ If one percent of precincts is less than one entire precinct, the audit must be conducted using an entire precinct. The results of the audit must be made public no later than 11:59 p.m. on the seventh day after certification of the election¹⁸ and reported to the Department within 15 days of completing the audit.¹⁹

Effects of Proposed Changes (Section 10)

The bill authorizes the use of an automated, independent audit of voting systems. This audit option must consist of a public automated tally of the votes cast across every race appearing on the ballot. The tally sheet must consist of election day, absentee, early voting, provisional, and overseas ballots in at least 20 percent of the precincts chosen at random by the county canvassing board or the local board responsible for certifying the election. The bill requires rules to be adopted for the approval of such equipment. The rules must provide that the system be:

- Completely independent of the primary voting system;
- Fast enough to produce final results within the current statutory time limit; and,
- Capable of demonstrating that the ballots of record have been accurately adjudicated by the audit system.

Requests for Absentee Ballots

Current Situation

An elector, a member of his or her immediate family, or the elector's legal guardian may make a request for an elector to receive an absentee ballot.²⁰ The request may be made in person, including via telephone, or in writing and is valid through the end of the calendar year of the second ensuing general election, unless the request specifies the elections for which he or she would like to receive absentee ballots.²¹ The Supervisor of Elections is required to record the

¹⁶ Section 101.591, F.S.

¹⁷ Section 101.591(2), F.S.

¹⁸ Section 101.591(4), F.S.

¹⁹ Section 101.591(5), F.S.

²⁰ Section 101.62(1)(b), F.S.

²¹ Section 101.62(1)(a), F.S.

dates of the request, delivery to the voter or delivery to the post office or other carrier, the date the ballot was received by the Supervisor, and any other information the Supervisor deems necessary.²²

Effects of Proposed Changes (Section 11)

The bill requires that a request for an absentee ballot which is to be sent to a place other than the address on file in the Florida Voter Registration System must be made in writing and signed by the elector.

The bill prohibits a Supervisor of Elections from providing or delivering an absentee ballot to an elector or his or her immediate family member on the day of an election unless there is an emergency which prevents the elector from going to his or her polling place. If the ballot is provided, the elector or his designee must execute an affidavit attesting to the facts constituting an emergency. The Department must adopt the form for the affidavit by rule.

The bill also requires the Supervisor to record the absence of a signature if the absentee ballot was returned without a signature on the Voter's Certificate.

Absentee Ballots

Current Situation

Absentee ballots are required to be sent to an elector with instructions, a secrecy envelope for his or her ballot, and a mailing envelope addressed by the Supervisor. The Voter's Certificate must be printed on the back of the envelope. The form of the instructions and the Voter's Certificate are prescribed by statute.²³ If a voter that registered by mail has not previously voted in this state, and has not been issued a current Florida identification card or drivers license, he or she receives a "special absentee ballot."²⁴ The "special absentee ballot" is sent with a secrecy envelope for his or her marked ballot, an envelope with the Voter's Certificate required by statute for special absentee ballots, and a mailing envelope.²⁵ There is also a separate set of instructions provided for voters required to vote by "special absentee ballot."²⁶ Absentee ballots are required to be received by the Supervisor by 7 p.m. on the day of the election. However, an absentee ballot from an overseas voter must be postmarked or signed and dated no later than general election day and received within 10 days after the general election. Only the federal race votes cast by such a ballot are included in the final certified vote results data. If an absentee ballot is returned unsigned, the ballot is rejected as illegal.²⁷

Section 104.0616, F.S., does not contain a restriction on the number of ballots that any person may possess. However, it is currently a third degree felony for a person to provide, offer to provide, or accept a pecuniary benefit in exchange for distributing, ordering, requesting,

²² Section 101.62(3), F.S.

²³ Sections 101.64, F.S., and 101.65, F.S.

²⁴ Sections 101.6921, F.S., and 97.0535, F.S.

²⁵ Section 101.6921, F.S.

²⁶ Section 101.6923, F.S.

²⁷ Section 101.68(2)(c)1., F.S.

collecting, delivering, or otherwise physically possessing absentee ballots, with intent to alter, change, modify, or erase any vote on the absentee ballot.

Effects of Proposed Changes (Sections 12, 13, 15 - 18, 22)

The bill requires that a voter who is voting by an absentee ballot or special absentee ballot must have his or her signature on the Voter's Certificate witnessed by a person over the age of 18 who is not a candidate. The bill makes corresponding changes to the form of the Voter's Certificate form prescribed by the statutes. The witness must sign the Voter's Certificate to swear or affirm that he or she witnessed the signature. Under the bill, the witness cannot be a candidate for office in Florida.

The following information is required to be added to the instructions provided by statute for completing the absentee or special absentee ballot:

- If you are an overseas voter casting a ballot in a presidential preference primary or general election, your absentee must be postmarked or signed and dated no later than the date of the election and received by the supervisor of elections of the county in which you are registered to vote no later than 10 days after the date of the election; and,
- In order for your absentee ballot to be counted, it must include the signature and legible address of an attesting witness 18 years of age or older affixed to the Voter's Certificate. If the signature is illegible, the Voter's Certificate must also include a readable printed name of the attesting witness. A candidate may not serve as an attesting witness.

The bill clarifies that an absentee ballot from an overseas voter will be counted in *any races* in a general election or presidential preference primary if it is postmarked or signed and dated no later than election day and arrives at the Supervisor's office no later than 10 days after the election.²⁸

The bill also specifies that the Supervisor can use the signature on the precinct register to verify the signature on a Voter's Certificate. Additionally, the bill allows a voter who has submitted an absentee ballot without a signature to complete an affidavit, which must be witnessed, in order to cure that defect. The form of the affidavit will be prescribed by the statute. Upon completion of the affidavit and verification of the affidavit by the Supervisor, the supervisor must attach the affidavit to the absentee ballot. The ballot will then be canvassed.

Finally, with regard to absentee ballots, the bill makes it a third degree felony for any person to possess more than two absentee ballots that do not belong to the person or his or her immediate family member. For purposes of the bill, "immediate family member" means a person's spouse, or the parent, child, grandparent, or sibling of the person or the person's spouse.

Early Voting

Current Situation

²⁸ Section 101.6952, F.S.; A conforming change was also made to s. 101.67, F.S. (**Section 15**)

The Supervisors of Elections shall allow early voting in the following locations:

- The Supervisor's main office;
- The Supervisor's or branch office, if it is a permanent facility that has been in use for at least one year prior to the election;
- Any city hall; or
- Permanent public library.²⁹

The early voting period for an election containing state and federal races runs between the 10th and 3rd days before the election with hours being set at no less than 6 hours and no more than 12 hours per day at each site during the early voting period.³⁰

Effects of Proposed Changes (Section 14)

The bill requires each county to have at least the same number of early voting sites in future general elections as the county used in the 2012 general election. In addition to the sites currently authorized, the bill allows early voting to occur at the following sites:

- Fairgrounds;
- Civic center;
- Courthouse;
- County commission building;
- Stadium;
- Convention center;
- Government-owned senior center;
- Government-owned community center; or,
- A supervisor may designate one early voting site per election in an area of the county that does not have any of the eligible early voting locations. Such additional early voting site must be geographically located so as to provide all voters in that area with an equal opportunity to cast a ballot.

Additionally, the bill expands the early voting period by requiring that early voting sites be open for a minimum of 8 hours per day up to a maximum of 12 hours per day. It also permits the Supervisor of Elections to make early voting available for the 15th through 11th days and the 2nd day before the election. The new maximum number of days allowable for early voting will be 14 days.

Solicitation at the Polls

Current Situation

People, political committees, committees of continuous existence, or other groups or organizations are prohibited from soliciting voters inside the polling place or within 100 feet of the entrance to a polling place, polling room, or early voting site. Prior to opening the polling

²⁹ Section 101.657(1)(a), F.S.

³⁰ Section 101.657(1)(d), F.S.

place or early voting site, the Supervisor of Elections or clerk must designate and mark the boundaries of the no-solicitation zone.³¹ Each Supervisor shall inform the clerk of the area in which soliciting is unlawful based upon the characteristics of that site. The Supervisor or clerk may take any reasonable actions to ensure order at the polls, including removal from the polls and/or the no-solicitation zone.³²

Effect of Proposed Changes (Section 20)

The bill clarifies that solicitation of voters may not occur within 100 feet of the entrance of the office of a Supervisor of Elections where absentee ballots are requested and printed on demand for the convenience of the voters who appear to request them in person. The bill prohibits a Supervisor from designating a no-solicitation zone or otherwise restricting access, outside of the 100 foot no-solicitation zone, to any person, political committee, committee of continuous existence, candidate, or other group or organization for the purpose of soliciting voters.

County Canvassing Boards - Membership and Canvassing

Current Situation

The county canvassing board must be composed of the Supervisor of Elections, a county court judge (chair), and the chairman of the board of county commissioners.³³ If no county court judge is able to serve, or all are disqualified, the chief judge of the judicial circuit court appoints a qualified elector who is not a candidate with opposition in the election being canvassed and who has not been an active participant in a campaign or candidacy of any candidate with opposition in the election being canvassed.³⁴ If the supervisor of elections is unable to serve or is disqualified, the chair of the board of county commissioners shall appoint as a substitute member a member of the board of county commissioners who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. The supervisor, however, shall act in an advisory capacity to the canvassing board.³⁵ If the chair of the board of county commissioners is unable to serve or is disqualified, the board of county commissioners shall appoint as a substitute member one of its members who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.³⁶ If a substitute member cannot be appointed as provided elsewhere in this subsection, the chief judge of the judicial circuit in which the county is located shall appoint as a substitute member a qualified elector of the county who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.³⁷

³¹ Section 102.031(4)(a), F.S.

³² Section 102.031(4)(c), F.S.

³³ Section 102.141(1), F.S.

³⁴ Section 102.141(1)(a), F.S.

³⁵ Section 102.141(1)(b), F.S.

³⁶ Section 102.141(1)(c), F.S.

³⁷ Section 102.141(1)(d), F.S.

Currently, the law requires county canvassing boards to report all early voting and tabulated absentee ballots to the Department of State within 30 minutes after the polls close. The county canvassing boards must update results thereafter every 45 minutes until complete. These reports do not include provisional ballots. The law does not address when the canvassing board must begin to upload into the county's internal database.

Effect of Proposed Changes (Section 21)

The bill provides for alternate members of the county canvassing board. Selection of the alternate members is as follows:

County court judge seat - The chief judge of the judicial circuit shall appoint a county court judge as an alternate. If that county court judge is unable to serve as an alternate, and all other county court judges are unable to serve, or are disqualified, then the chief judge of the circuit shall appoint a qualified elector who is not a candidate or active in any campaign being canvassed as the alternate.

Chair of the board of county commissioners seat - The chairman of the board of county commissioners shall appoint a member of the board of county commissioners as an alternate member of the county canvassing board or, if each member of the board of county commissioners is unable to serve or is disqualified, shall appoint a qualified elector who is not a candidate or active in any campaign being canvassed as the alternate.

If a member of the county canvassing board is unable to participate in a meeting, the chair of the canvassing board, or his or her designee, must designate which alternate member will serve. The bill clarifies that any decision made by the board must be made of 2 of the 3 sitting board members, regardless of whether he or she is an alternate member. Alternate members may be present, observe, and communicate with the three members constituting the county canvassing board, but may not vote in the board's decisions or determinations.

The bill also requires the Supervisors of Elections to upload early voting and absentee ballots that have been canvassed and tabulated by the end of the early voting period by 7 p.m. on the day before the election.

Electors Requiring Assistance in Casting Ballots

Current Situation

Section 97.061(1), F.S., allows a person to specially register as a voter who needs assistance and shall be entitled to receive the assistance at the polls. The voter's registration record must be noted with the fact that the person needs assistance with voting. The precinct register generated by the Supervisor of Elections must contain a notation that the voter is eligible for assistance in voting and permits a similar notation on the voter information card.³⁸ The specially registered voter is entitled to receive the assistance of two election officials or some other person of the voter's choosing. However, he or she may not use his employer, an agent of his or her employer,

³⁸ Section 97.061(2), F.S.

or an officer or agent of his or her union. By specially registering pursuant to s. 97.061, the voter is not required to execute the "Declaration to Secure Assistance" prescribed in s. 101.051, F.S. A specially registered person is required to notify the Supervisor of Elections of any change in his or her condition that makes it unnecessary for him or her to receive assistance in voting.³⁹

Currently, the law prohibits more than one person to be in the voting both with any elector.⁴⁰ However, if an elector who requires assistance by reason of blindness, disability, or inability to read or write may request the assistance of two or more election officials or some other person of the elector's choice.⁴¹ An employer, an agent of an employer, or an officer or agent of a union may not assist the elector in casting his or her vote.⁴² The same rules apply for absentee ballots.⁴³ If an elector requires assistance, and has not specially registered pursuant to s. 97.061, F.S., he or she is required to complete the "Declaration to Secure Assistance" provided in s. 101.051(4), F.S.

Effects of Proposed Changes (Section 2 and 5)

The bill requires a voter who needs assistance in casting a ballot to use a person that he or she knew before election day, regardless of whether he or she is specially registered as provided in s. 97.061, F.S. Additionally, the bill prohibits a person from assisting more than ten electors who are specially registered pursuant to s. 97.061, F.S., during any election.

Section 23 provides an effective date of October 1, 2013.

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.

³⁹ Section 97.061(3), F.S.

⁴⁰ Section 101.051(2), F.S.

⁴¹ Section 101.051(1), F.S.

⁴² *Id.*

⁴³ Section 101.051(3), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Currently, the bill only prohibits any individual from providing assistance to 10 or more electors who are specially registered pursuant to s. 97.061, F.S. However, electors who are not specially registered pursuant to s. 97.061, F.S., are also allowed to obtain necessary assistance at the polls by completing the Declaration to Secure Assistance in s. 101.051, F.S. The prohibition against assisting 10 or more electors would not apply to those who complete the Declaration to Secure Assistance. For consistency, the prohibition against providing assistance to more than 10 electors during any election should also be placed in s. 101.051, F.S.

VII. Related Issues:

None.

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

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

CS/CS/CS by Rules on April 9, 2013:

The committee substitute differs from the original bill in that it:

- prohibits a person from assisting an elector to cast his or her ballot that the elector did not know before election day;
- prohibits a person from assisting more than 10 electors who are specially registered pursuant to s. 97.061, F.S., per election; and
- prohibits solicitation of votes within 100 feet of the entrance of the office of a Supervisor of Elections where absentee ballots are requested and printed on demand for the convenience of electors who appear to request them.

CS/CS by Community Affairs on April 2, 2013:

The committee substitute differs from the original bill in that it:

- provides definitions for standards, and vendor;
- requires a vendor to file a written disclosure with the Department;
- provides what constitutes a cure of a defect;
- requires a vendor to file a new disclosure with the Department if a vendor becomes aware of a defect within a specified period;
- clarifies that a county is required to operate the same number of early voting sites in future general elections as it operated in the 2012 general election; and
- authorizes the supervisor to designate one additional early voting site per election.

CS by Ethics and Elections on March 18, 2013:

The committee substitute differs from the original bill in that it:

- requires supervisors of elections to submit a election preparation report to the Secretary of State at least 3 months before a general election;
- specifies the content of the report; decreases the time period between a primary election and a general election;
- specifies that the 75 word limitation on ballot statement length does not apply to a ballot summary revised by the Attorney General;
- requires a person to provide the name, mailing address, and telephone number of a registered agent of a voting systems vendor to the Department of State under certain circumstances; provides that proof of delivery or attempt to deliver constitutes valid notice; requires any person who submitted a voting system to the Department for approval or sold or leased any approved voting system to file a defect disclosure with the Department;
- authorizes the Department to suspend all sales or leases or use in an election of a defective voting system;
- provides procedures for the suspension of voting systems; authorizes the Department to withdraw approval of voting systems under certain circumstances; authorizes the Department to investigate whether a voting system is defective;
- establishes investigatory procedures and requirements;
- provides a penalty for certain vendor failures;
- authorizes use of automated, independent audits of voting systems; provides audit requirements for automated, independent audits;
- revises the requirements for a valid absentee ballot request;
- prohibits the supervisor from providing an absentee ballot on the day of an election under certain circumstances;
- requires a person who requests an absentee ballot to complete an affidavit if the requestor returns an unsigned ballot;
- revises the requirements for a voter's certificate;
- revises the instructions to absent electors;
- revises the permissible sites for early voting;
- requires each county to operate at least the same number of early voting sites as used for the 2012 general election;
- revises the number of days and hours for early voting; authorizes the supervisor to use the elector's signature in a precinct register to compare with the elector's signature on the voter's certificate;
- provides that an absentee ballot must clearly identify the name of the witness in order to be considered legal;
- requires the supervisor to provide the elector with the specific reason his or her ballot was rejected;
- requires the supervisor to allow electors to complete an affidavit to cure an unsigned absentee ballot prior to canvassing;
- provides the form and contents of the affidavit; requires the supervisor to attach a completed affidavit to the elector's absentee ballot;
- provides that absentee ballots received from overseas voters in certain elections may be received up to 10 days after the date of the election;

- revises restrictions relating to the solicitation of voters;
- provides for the selection of alternate canvassing board members; requires a supervisor to upload certain canvassed election results into a county's election management system prior to the election;
- prohibits public disclosure of uploaded results before the close of the polls on election day;
- prohibits possession of more than two absentee ballots under certain circumstances.

B. Amendments:

None.



891828

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2013	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 1198 and 1199
insert:

Section 21. Subsection (3) of section 97.061, Florida
Statutes, is amended to read:

97.061 Special registration for electors requiring
assistance.—

(3) The precinct register generated by the supervisor shall
contain a notation that such person is eligible for assistance
in voting, and the supervisor may make a notation on the voter
information card that such person is eligible for assistance in
voting. Such person shall be entitled to receive the assistance



14 of two election officials or some other person of his or her own
15 choice, other than the person's employer, an ~~the~~ agent of the
16 person's employer, or an officer or agent of the person's union,
17 without the necessity of executing the "Declaration to Secure
18 Assistance" prescribed in s. 101.051, so long as the person is
19 known to the elector before election day. Such person shall
20 notify the supervisor of any change in his or her condition
21 which makes it unnecessary for him or her to receive assistance
22 in voting. An individual may not provide assistance to more than
23 10 electors during any election.

24 Section 22. Subsection (1) of section 101.051, Florida
25 Statutes, is amended to read:

26 101.051 Electors seeking assistance in casting ballots;
27 oath to be executed; forms to be furnished.-

28 (1) Any elector applying to vote in any election who
29 requires assistance to vote by reason of blindness, disability,
30 or inability to read or write may request the assistance of two
31 election officials or some other person of the elector's own
32 choice, other than the elector's employer, an agent of the
33 employer, or an officer or agent of his or her union, to assist
34 the elector in casting his or her vote, so long as the person is
35 known to the elector before election day. Any such elector,
36 before retiring to the voting booth, may have one of such
37 persons read over to him or her, without suggestion or
38 interference, the titles of the offices to be filled and the
39 candidates therefor and the issues on the ballot. After the
40 elector requests the aid of the two election officials or the
41 person of the elector's choice, they shall retire to the voting
42 booth for the purpose of casting the elector's vote according to



891828

43 the elector's choice.

44

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

46 And the title is amended as follows:

47 Delete line 104

48 and insert:

49 ballots under certain circumstances; amending s.

50 97.061, F.S.; revising restrictions relating to

51 electors requiring assistance; amending s. 101.051,

52 F.S.; conforming a provision to changes made by the

53 act; providing an



580004

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2013	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete lines 1073 - 1078
and insert:

Section 18. Paragraphs (a) and (b) of subsection (4) of section 102.031, Florida Statutes, are amended, and paragraph (d) is added to that subsection, to read:

(4) (a) No person, political committee, committee of continuous existence, or other group or organization may solicit voters inside the polling place or within 100 feet of the entrance to any polling place, ~~or~~ a polling room where the polling place is also a polling room, ~~or~~ an early voting site, or an office of the supervisor of elections where absentee



580004

14 ballots are requested and printed on demand for the convenience
15 of electors who appear in person to request them. Before the
16 opening of the polling place or early voting site, the clerk or
17 supervisor shall designate the no-solicitation zone and mark the
18 boundaries.

By the Committees on Community Affairs; and Ethics and Elections; and Senator Latvala

578-03426-13

2013600c2

1 A bill to be entitled
 2 An act relating to elections; amending s. 97.0555,
 3 F.S.; revising qualifications for late voter
 4 registration; creating s. 100.032, F.S.; requiring
 5 supervisors of elections to submit a report to the
 6 Secretary of State at least 3 months before a general
 7 election; specifying the content of the report;
 8 amending s. 100.061, F.S.; decreasing the time period
 9 between a primary election and a general election;
 10 amending s. 101.161, F.S.; providing a limitation on
 11 the number of words for certain ballot summaries in
 12 joint resolutions proposed by the Legislature;
 13 deleting a provision providing that a ballot statement
 14 consisting of the full text of a constitutional
 15 amendment or revision is presumed to be a clear and
 16 unambiguous statement; amending s. 101.5605, F.S.;
 17 requiring a person to provide the name, mailing
 18 address, and telephone number of a registered agent of
 19 a voting systems vendor to the Department of State
 20 under certain circumstances; providing that proof of
 21 delivery or attempt to deliver constitutes valid
 22 notice; creating s. 101.56065, F.S.; providing
 23 definitions; requiring a vendor to file a written
 24 disclosure with the department; providing requirements
 25 for the disclosure; providing what constitutes a cure
 26 of a defect; requiring a vendor to file a new
 27 disclosure with the department if a vendor becomes
 28 aware of a defect within a specified period;
 29 authorizing the department to suspend all sales or

Page 1 of 42

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

578-03426-13

2013600c2

30 leases or use in an election of a defective voting
 31 system; authorizing the department to suspend all
 32 sales or leases or use in an election of a defective
 33 voting system; providing procedures for the suspension
 34 of voting systems; authorizing the department to
 35 withdraw approval of voting systems under certain
 36 circumstances; authorizing the department to initiate
 37 an investigation of a defective voting system;
 38 establishing procedures and requirements of
 39 investigations; providing a penalty; repealing s.
 40 101.56075(4), F.S., relating to the requirement that
 41 all voting systems used by voters in a state election
 42 allow placement of the full text of a constitutional
 43 amendment or revision containing stricken or
 44 underlined text by a specified date; amending s.
 45 101.591, F.S.; authorizing use of automated,
 46 independent audits of voting systems; providing audit
 47 requirements; requiring the Division of Elections to
 48 adopt rules; amending s. 101.62, F.S.; revising the
 49 requirements for a valid absentee ballot request;
 50 requiring the supervisor to record the absence of the
 51 voter's signature on the voter's certificate under
 52 specified circumstances; prohibiting the supervisor
 53 from providing an absentee ballot on the day of an
 54 election under certain circumstances; requiring a
 55 person who requests an absentee ballot to complete an
 56 affidavit under certain circumstances; amending s.
 57 101.64, F.S.; revising the requirements for a voter's
 58 certificate; amending s. 101.65, F.S.; revising the

Page 2 of 42

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

578-03426-13

2013600c2

59 instructions to absent electors; amending s. 101.657,
 60 F.S.; revising the list of permissible sites available
 61 for early voting; authorizing the supervisor to
 62 designate one additional early voting site per
 63 election; providing requirements; requiring each
 64 county to operate at least the same number of early
 65 voting sites as used for the 2012 general election;
 66 revising the number of days and hours for early
 67 voting; amending s. 101.67, F.S.; conforming a
 68 provision to changes made by the act; amending s.
 69 101.68, F.S., and reenacting subsection (2), relating
 70 to the canvassing of absentee ballots; authorizing the
 71 supervisor to use the elector's signature in a
 72 precinct register to compare with the elector's
 73 signature on the voter's certificate; providing that
 74 an absentee ballot must clearly identify the name of
 75 the witness in order to be considered legal; requiring
 76 the supervisor to provide the elector with the
 77 specific reason his or her ballot was rejected;
 78 requiring the supervisor to allow electors to complete
 79 an affidavit to cure an unsigned absentee ballot prior
 80 to canvassing; providing the form and contents of the
 81 affidavit; providing instructions to accompany each
 82 absentee ballot affidavit; requiring the affidavit,
 83 instructions, and the supervisor's office mailing
 84 address to be posted on certain websites; requiring
 85 the supervisor to attach a received affidavit to the
 86 appropriate absentee ballot mailing envelope; amending
 87 s. 101.6921, F.S.; revising the voter's certificate

Page 3 of 42

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

578-03426-13

2013600c2

88 accompanying a special absentee ballot; amending s.
 89 101.6923, F.S.; revising special absentee ballot
 90 instructions; amending s. 101.6952, F.S.; providing
 91 that absentee ballots received from overseas voters in
 92 certain elections may be received up to 10 days after
 93 the date of the election; amending s. 102.031, F.S.;
 94 revising restrictions relating to the solicitation of
 95 voters; amending s. 102.141, F.S.; revising methods of
 96 selecting canvassing board members; requiring a
 97 supervisor to upload certain canvassed election
 98 results into a county's election management system
 99 prior to the election; prohibiting public disclosure
 100 of uploaded results before the close of the polls on
 101 election day; amending s. 104.0616, F.S.; providing a
 102 definition for the term "immediate family";
 103 prohibiting possession of more than two absentee
 104 ballots under certain circumstances; providing an
 105 effective date.

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

108
 109 Section 1. Section 97.0555, Florida Statutes, is amended to
 110 read:

111 97.0555 Late registration.—An individual or accompanying
 112 family member who has been discharged or separated from the
 113 uniformed services or the United States Merchant Marine, has
 114 returned from a combat zone or forward-deployed area, or has
 115 separated from employment outside the territorial limits of the
 116 United States, after the book-closing date for an election

Page 4 of 42

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

578-03426-13 2013600c2

117 pursuant to s. 97.055 and who is otherwise qualified may
 118 register to vote in such election until 5 p.m. on the Friday
 119 before that election in the office of the supervisor of
 120 elections. Such persons must produce sufficient documentation
 121 showing evidence of qualifying for late registration pursuant to
 122 this section.

123 Section 2. Section 100.032, Florida Statutes, is created to
 124 read:

125 100.032 Election preparation report; general election.—Each
 126 supervisor of elections must submit a report to the Secretary of
 127 State at least 3 months before a general election which outlines
 128 preparations for the upcoming general election. The report must
 129 include, at a minimum, the following elements: the anticipated
 130 staffing levels during the early voting period, on election day,
 131 and after election day; and the anticipated amount of automatic
 132 tabulating equipment at each early voting site and polling
 133 place.

134 Section 3. Section 100.061, Florida Statutes, is amended to
 135 read:

136 100.061 Primary election.—In each year in which a general
 137 election is held, a primary election for nomination of
 138 candidates of political parties shall be held on the Tuesday 10
 139 ~~12~~ weeks prior to the general election. The candidate receiving
 140 the highest number of votes cast in each contest in the primary
 141 election shall be declared nominated for such office. If two or
 142 more candidates receive an equal and highest number of votes for
 143 the same office, such candidates shall draw lots to determine
 144 which candidate is nominated.

145 Section 4. Subsection (3) of section 101.161, Florida

578-03426-13 2013600c2

146 Statutes, is amended to read:

147 101.161 Referenda; ballots.—

148 (3) (a) Each joint resolution that proposes a constitutional
 149 amendment or revision shall include one or more ballot
 150 statements set forth in order of priority. Each ballot statement
 151 shall consist of a ballot title, by which the measure is
 152 commonly referred to or spoken of, not exceeding 15 words in
 153 length, and ~~either~~ a ballot summary that describes the chief
 154 purpose of the amendment or revision in clear and unambiguous
 155 language, ~~or the full text of the amendment or revision.~~ If a
 156 joint resolution that proposes a constitutional amendment or
 157 revision contains only one ballot statement, the ballot summary
 158 may not exceed 75 words in length. If a joint resolution that
 159 proposes a constitutional amendment or revision contains more
 160 than one ballot statement, the first ballot summary, in order of
 161 priority, may not exceed 75 words in length.

162 (b) The Department of State shall furnish a designating
 163 number pursuant to subsection (2) and the appropriate ballot
 164 statement to the supervisor of elections of each county. The
 165 ballot statement shall be printed on the ballot after the list
 166 of candidates, followed by the word "yes" and also by the word
 167 "no," and shall be styled in such a manner that a "yes" vote
 168 will indicate approval of the amendment or revision and a "no"
 169 vote will indicate rejection.

170 (c) ~~(b)~~ 1. Any action for a judicial determination that one
 171 or more ballot statements embodied in a joint resolution are
 172 defective must be commenced by filing a complaint or petition
 173 with the appropriate court within 30 days after the joint
 174 resolution is filed with the Secretary of State. The complaint

578-03426-13

2013600c2

175 or petition shall assert all grounds for challenge to each
 176 ballot statement. Any ground not asserted within 30 days after
 177 the joint resolution is filed with the Secretary of State is
 178 waived.

179 2. The court, including any appellate court, shall accord
 180 an action described in subparagraph 1. priority over other
 181 pending cases and render a decision as expeditiously as
 182 possible. If the court finds that all ballot statements embodied
 183 in a joint resolution are defective and further appeals are
 184 declined, abandoned, or exhausted, unless otherwise provided in
 185 the joint resolution, the Attorney General shall, within 10
 186 days, prepare and submit to the Department of State a revised
 187 ballot title or ballot summary that corrects the deficiencies
 188 identified by the court, and the Department of State shall
 189 furnish a designating number and the revised ballot title or
 190 ballot summary to the supervisor of elections of each county for
 191 placement on the ballot. The revised ballot summary may exceed
 192 75 words in length. The court shall retain jurisdiction over
 193 challenges to a revised ballot title or ballot summary prepared
 194 by the Attorney General, and any challenge to a revised ballot
 195 title or ballot summary must be filed within 10 days after a
 196 revised ballot title or ballot summary is submitted to the
 197 Department of State.

198 ~~3. A ballot statement that consists of the full text of an~~
 199 ~~amendment or revision shall be presumed to be a clear and~~
 200 ~~unambiguous statement of the substance and effect of the~~
 201 ~~amendment or revision, providing fair notice to the electors of~~
 202 ~~the content of the amendment or revision and sufficiently~~
 203 ~~advising electors of the issue upon which they are to vote.~~

Page 7 of 42

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

578-03426-13

2013600c2

204 Section 5. Subsection (3) of section 101.5605, Florida
 205 Statutes, is amended to read:

206 101.5605 Examination and approval of equipment.—

207 (3) (a) Before the Department of State approves the
 208 electronic or electromechanical voting system, the person who
 209 submitted it for examination shall provide the department with
 210 the name, mailing address, and telephone number of a registered
 211 agent, which agent must have and continuously maintain an office
 212 in this state. Any change in the name, address, or telephone
 213 number of the registered agent shall promptly be made known to
 214 the department.

215 (b) Before entering into a contract for the sale or lease
 216 of a voting system approved under this section to any county,
 217 the person entering into such contract shall provide the
 218 department with the name, mailing address, and telephone number
 219 of a registered agent, which agent must have and continuously
 220 maintain an office in this state. Any change in the name,
 221 address, or telephone number of the registered agent shall
 222 promptly be made known to the department.

223 (c) The department's proof of delivery or attempted
 224 delivery to the last mailing address of the registered agent on
 225 file with the department at the time of delivery or attempted
 226 delivery is valid for all notice purposes.

227 (d) Within 30 days after completing the examination and
 228 upon approval of any electronic or electromechanical voting
 229 system, the Department of State shall make and maintain a report
 230 on the system, together with a written or printed description
 231 and drawings and photographs clearly identifying the system and
 232 the operation thereof. As soon as practicable after such filing,

Page 8 of 42

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

578-03426-13 2013600c2

233 the department shall send a notice of certification and, upon
 234 request, a copy of the report to the governing bodies of the
 235 respective counties of the state. Any voting system that does
 236 not receive the approval of the department ~~may shall~~ not be
 237 adopted for or used at any election.

238 ~~(e)~~ (b) After a voting system has been approved by the
 239 Department of State, any change or improvement in the system is
 240 required to be approved by the department prior to the adoption
 241 of such change or improvement by any county. If any such change
 242 or improvement does not comply with the requirements of this
 243 act, the department shall suspend all sales of the equipment or
 244 system in the state until the equipment or system complies with
 245 the requirements of this act.

246 Section 6. Section 101.56065, Florida Statutes, is created
 247 to read:

248 101.56065 Voting system defects; disclosure;
 249 investigations; penalties.-

250 (1) For purposes of this section, the term:

251 (a) "Defect" means:

252 1. Any failure, fault, or flaw in an electronic or
 253 electromechanical voting system approved pursuant to s. 101.5605
 254 which results in nonconformance with the standards in a manner
 255 that affects the timeliness or accuracy of the casting or
 256 counting of ballots; or

257 2. Any failure or inability of the voting system
 258 manufacturer or vendor to make available or provide approved
 259 replacements of hardware or software to the counties that have
 260 purchased the approved voting system, the unavailability of
 261 which results in the system's nonconformance with the standards

578-03426-13 2013600c2

262 in a manner that affects the timeliness or accuracy of the
 263 casting or counting of ballots.

264 (b) "Standards" refers to the requirements in ss. 101.5606
 265 and 101.56062 under which a voting system was approved for use
 266 in the state.

267 (c) "Vendor" means a person who submits or previously
 268 submitted a voting system that was approved by the Department of
 269 State in accordance with s. 101.5605, or a person who enters
 270 into a contract for the sale or lease of a voting system to any
 271 county, or that previously entered into such a contract that has
 272 not expired.

273 (2) (a) No later than December 31, 2013, and, thereafter, on
 274 January 1 of every odd-numbered year, each vendor shall file a
 275 written disclosure with the department identifying any known
 276 defect in the voting system or the fact that there is no known
 277 defect, the effect of any defect on the operation and use of the
 278 approved voting system, and any known corrective measures to
 279 cure a defect, including, but not limited to, advisories and
 280 bulletins issued to system users.

281 (b) Implementation of corrective measures approved by the
 282 department which enable a system to conform to the standards and
 283 ensure the timeliness and accuracy of the casting and counting
 284 of ballots constitutes a cure of a defect.

285 (c) If a vendor becomes aware of the existence of a defect,
 286 he or she must file a new disclosure with the department as
 287 provided in paragraph (a) within 30 days after the date the
 288 vendor determined or reasonably should have determined that the
 289 defect existed.

290 (d) If a vendor discloses to the department that a defect

578-03426-13 2013600c2

291 exists, the department may suspend all sales or leases of the
 292 voting system in the state and may suspend the use of the system
 293 in any election in the state. The department shall provide
 294 written notice of any such suspension to each affected vendor
 295 and supervisor of elections. If the department determines that
 296 the defect no longer exists, the department shall lift the
 297 suspension and provide written notice to each affected vendor
 298 and supervisor of elections.

299 (e) If a vendor fails to file a required disclosure for a
 300 voting system previously approved by the department, that system
 301 may not be sold, leased, or used for elections in the state
 302 until it has been submitted for examination and approval and
 303 adopted for use pursuant to s. 101.5605. The department shall
 304 provide written notice to all supervisors of elections that the
 305 system is no longer approved.

306 (3) (a) If the department has reasonable cause to believe a
 307 voting system approved pursuant to s. 101.5605 contains a defect
 308 either before, during, or after an election which has not been
 309 disclosed pursuant to subsection (2), the department may
 310 investigate whether the voting system has a defect.

311 (b) The department may initiate an investigation pursuant
 312 to paragraph (a) on its own initiative or upon the written
 313 request of the supervisor of elections of a county that
 314 purchased or leased a voting system that contains the alleged
 315 defect.

316 (c) Upon initiating an investigation, the department shall
 317 provide written notice to the vendor and all of the supervisors
 318 of elections.

319 (4) (a) If the department determines by a preponderance of

578-03426-13 2013600c2

320 the evidence that a defect exists in the voting system, or that
 321 a vendor failed to timely disclose a defect pursuant to
 322 subsection (2), the department shall provide written notice to
 323 the affected vendor and supervisors of elections.

324 (b) A vendor entitled to receive notice pursuant to
 325 paragraph (a) shall, within 10 days, file a written response to
 326 the department which:

327 1. Denies that the alleged defect exists or existed as
 328 alleged by the department or that the vendor failed to timely
 329 disclose a defect, and sets forth the reasons for such denial;
 330 or

331 2. Admits that the defect exists or existed as alleged by
 332 the department or that the vendor failed to timely disclose a
 333 defect.

334 (c) If the defect has been cured, the vendor shall provide
 335 an explanation of how the defect was cured.

336 (d) If the defect has not been cured, the vendor shall
 337 inform the department whether the defect can be cured and shall
 338 provide the department with a plan for curing the defect. If the
 339 defect can be cured, the department shall establish a timeframe
 340 within which to cure the defect.

341 (5) If after receiving a response from the vendor, the
 342 department determines that a defect does not exist or has been
 343 cured within the timeframe established by the department, the
 344 department shall take no further action.

345 (6) If the department determines that: a vendor failed to
 346 timely disclose a defect; or that a defect exists and a vendor
 347 has not filed a written response or has failed to cure within
 348 the timeframe established by the department, or if the defect

578-03426-13 2013600c2

349 cannot be cured, the department shall impose a civil penalty of
 350 \$25,000 for the defect plus an amount equal to the actual costs
 351 incurred by the department in conducting the investigation.

352 (7) If the department finds that a defect existed:

353 (a) The department may suspend all sales and leases of the
 354 voting system and may suspend its use in any county in the
 355 state. The department shall provide written notice of the
 356 suspension to each affected vendor and supervisor of elections.

357 (b) If the department determines that a defect no longer
 358 exists in a voting system that has been suspended from use
 359 pursuant to paragraph (a), the department shall lift the
 360 suspension and authorize the sale, lease, and use of the voting
 361 system in any election in the state. The department shall
 362 provide written notice that the suspension has been lifted to
 363 each affected vendor and supervisor of elections.

364 (c) If the defect cannot be cured, the department may
 365 disapprove the voting system for use in elections in the state.
 366 The department shall provide written notice to all supervisors
 367 of elections that the system is no longer approved. After
 368 approval of a system has been withdrawn pursuant to this
 369 paragraph, the system may not be sold, leased, or used in
 370 elections in the state until it has been submitted for
 371 examination and approval and adopted for use pursuant to s.
 372 101.5605.

373 (d) Any vendor against whom a civil penalty was imposed
 374 under this section may not submit a voting system for approval
 375 by the Department of State in accordance with s. 101.5605 or
 376 enter into a contract for sale or lease of a voting system in
 377 the state until the civil penalties have been paid and the

578-03426-13 2013600c2

378 department provides written confirmation to the supervisors of
 379 elections of the payment.

380 (8) The department shall prepare a written report of any
 381 investigation conducted pursuant to this section.

382 (9) The authority of the department under this section is
 383 in addition to, and not exclusive of, any other authority
 384 provided by law.

385 (10) All proceedings under this section are exempt from
 386 chapter 120.

387 Section 7. Subsection (4) of section 101.56075, Florida
 388 Statutes, is repealed.

389 Section 8. Subsections (1) and (2) of section 101.591,
 390 Florida Statutes, are amended, and subsection (4) of that
 391 section is republished, to read:

392 101.591 Voting system audit.—

393 (1) Immediately following the certification of each
 394 election, the county canvassing board or the local board
 395 responsible for certifying the election shall conduct a manual
 396 audit or an automated, independent audit of the voting systems
 397 used in randomly selected precincts.

398 (2) (a) A manual ~~The~~ audit shall consist of a public manual
 399 tally of the votes cast in one randomly selected race that
 400 appears on the ballot. The tally sheet shall include election-
 401 day, absentee, early voting, provisional, and overseas ballots,
 402 in at least 1 percent but no more than 2 percent of the
 403 precincts chosen at random by the county canvassing board or the
 404 local board responsible for certifying the election. If 1
 405 percent of the precincts is less than one entire precinct, the
 406 audit shall be conducted using at least one precinct chosen at

578-03426-13 2013600c2

407 random by the county canvassing board or the local board
 408 responsible for certifying the election. Such precincts shall be
 409 selected at a publicly noticed canvassing board meeting.

410 (b) An automated audit shall consist of a public automated
 411 tally of the votes cast across every race that appears on the
 412 ballot. The tally sheet shall include election day, absentee,
 413 early voting, provisional, and overseas ballots in at least 20
 414 percent of the precincts chosen at random by the county
 415 canvassing board or the local board responsible for certifying
 416 the election. Such precincts shall be selected at a publicly
 417 noticed canvassing board meeting.

418 (c) The division shall adopt rules for approval of an
 419 independent audit system which provide that the system, at a
 420 minimum, must be:

421 1. Completely independent of the primary voting system.

422 2. Fast enough to produce final audit results within the
 423 timeframe prescribed in subsection (4).

424 3. Capable of demonstrating that the ballots of record have
 425 been accurately adjudicated by the audit system.

426 (4) The audit must be completed and the results made public
 427 no later than 11:59 p.m. on the 7th day following certification
 428 of the election by the county canvassing board or the local
 429 board responsible for certifying the election.

430 Section 9. Subsections (1) and (3) and paragraph (c) of
 431 subsection (4) of section 101.62, Florida Statutes, are amended
 432 to read:

433 101.62 Request for absentee ballots.—

434 (1) (a) The supervisor shall accept a request for an
 435 absentee ballot from an elector in person or in writing. One

578-03426-13 2013600c2

436 request shall be deemed sufficient to receive an absentee ballot
 437 for all elections through the end of the calendar year of the
 438 second ensuing regularly scheduled general election, unless the
 439 elector or the elector's designee indicates at the time the
 440 request is made the elections for which the elector desires to
 441 receive an absentee ballot. Such request may be considered
 442 canceled when any first-class mail sent by the supervisor to the
 443 elector is returned as undeliverable.

444 (b) The supervisor may accept a written or telephonic
 445 request for an absentee ballot to be mailed to an elector's
 446 address on file in the Florida Voter Registration System from
 447 the elector, or, if directly instructed by the elector, a member
 448 of the elector's immediate family, or the elector's legal
 449 guardian; if the ballot is requested to be mailed to an address
 450 other than the elector's address on file in the Florida Voter
 451 Registration System, the request must be made in writing and
 452 signed by the elector. For purposes of this section, the term
 453 "immediate family" has the same meaning as specified in
 454 paragraph (4) (c). The person making the request must disclose:

455 1. The name of the elector for whom the ballot is
 456 requested.

457 2. The elector's address.

458 3. The elector's date of birth.

459 4. The requester's name.

460 5. The requester's address.

461 6. The requester's driver's license number, if available.

462 7. The requester's relationship to the elector.

463 8. The requester's signature (written requests only).

464 (c) Upon receiving a request for an absentee ballot from an

578-03426-13

2013600c2

465 absent voter, the supervisor of elections shall notify the voter
 466 of the free access system that has been designated by the
 467 department for determining the status of his or her absentee
 468 ballot.

469 (3) For each request for an absentee ballot received, the
 470 supervisor shall record the date the request was made, the date
 471 the absentee ballot was delivered to the voter or the voter's
 472 designee or the date the absentee ballot was delivered to the
 473 post office or other carrier, the date the ballot was received
 474 by the supervisor, the absence of the voter's signature on the
 475 voter's certificate, if applicable, and such other information
 476 he or she may deem necessary. This information shall be provided
 477 in electronic format as provided by rule adopted by the
 478 division. The information shall be updated and made available no
 479 later than 8 a.m. of each day, including weekends, beginning 60
 480 days before the primary until 15 days after the general election
 481 and shall be contemporaneously provided to the division. This
 482 information shall be confidential and exempt from ~~the provisions~~
 483 ~~of~~ s. 119.07(1) and shall be made available to or reproduced
 484 only for the voter requesting the ballot, a canvassing board, an
 485 election official, a political party or official thereof, a
 486 candidate who has filed qualification papers and is opposed in
 487 an upcoming election, and registered political committees or
 488 registered committees of continuous existence, for political
 489 purposes only.

490 (4)

491 (c) The supervisor shall provide an absentee ballot to each
 492 elector by whom a request for that ballot has been made by one
 493 of the following means:

Page 17 of 42

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

578-03426-13

2013600c2

494 1. By nonforwardable, return-if-undeliverable mail to the
 495 elector's current mailing address on file with the supervisor or
 496 any other address the elector specifies in the request.

497 2. By forwardable mail, e-mail, or facsimile machine
 498 transmission to absent uniformed services voters and overseas
 499 voters. The absent uniformed services voter or overseas voter
 500 may designate in the absentee ballot request the preferred
 501 method of transmission. If the voter does not designate the
 502 method of transmission, the absentee ballot shall be mailed.

503 3. By personal delivery before 7 p.m. on election day to
 504 the elector, upon presentation of the identification required in
 505 s. 101.043.

506 4. By delivery to a designee on election day or up to 5
 507 days prior to the day of an election. Any elector may designate
 508 in writing a person to pick up the ballot for the elector;
 509 however, the person designated may not pick up more than two
 510 absentee ballots per election, other than the designee's own
 511 ballot, except that additional ballots may be picked up for
 512 members of the designee's immediate family. For purposes of this
 513 section, "immediate family" means the designee's spouse or the
 514 parent, child, grandparent, or sibling of the designee or of the
 515 designee's spouse. The designee shall provide to the supervisor
 516 the written authorization by the elector and a picture
 517 identification of the designee and must complete an affidavit.
 518 The designee shall state in the affidavit that the designee is
 519 authorized by the elector to pick up that ballot and shall
 520 indicate if the elector is a member of the designee's immediate
 521 family and, if so, the relationship. The department shall
 522 prescribe the form of the affidavit. If the supervisor is

Page 18 of 42

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

578-03426-13 2013600c2

523 satisfied that the designee is authorized to pick up the ballot
 524 and that the signature of the elector on the written
 525 authorization matches the signature of the elector on file, the
 526 supervisor shall give the ballot to that designee for delivery
 527 to the elector.

528 5. Except as provided in s. 101.655, the supervisor may not
 529 deliver an absentee ballot to an elector or an elector's
 530 immediate family member on the day of the election unless there
 531 is an emergency, to the extent that the elector will be unable
 532 to go to his or her assigned polling place. If an absentee
 533 ballot is delivered, the elector or his or her designee shall
 534 execute an affidavit affirming to the facts which allow for
 535 delivery of the absentee ballot. The department shall adopt a
 536 rule providing for the form of the affidavit.

537 Section 10. Subsections (1) through (3) of section 101.64,
 538 Florida Statutes, are amended to read:

539 101.64 Delivery of absentee ballots; envelopes; form.—

540 (1) The supervisor shall enclose with each absentee ballot
 541 two envelopes: a secrecy envelope, into which the absent elector
 542 shall enclose his or her marked ballot; and a mailing envelope,
 543 into which the absent elector shall then place the secrecy
 544 envelope, which shall be addressed to the supervisor and also
 545 bear on the back side a certificate in substantially the
 546 following form:

547
 548 Note: Please Read Instructions Carefully Before
 549 Marking Ballot and Completing Voter's Certificate.

550
 551 VOTER'S CERTIFICATE

Page 19 of 42

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

578-03426-13 2013600c2

552 I, . . . , do solemnly swear or affirm that I am a qualified
 553 and registered voter of . . . County, Florida, and that I have
 554 not and will not vote more than one ballot in this election. I
 555 understand that if I commit or attempt to commit any fraud in
 556 connection with voting, vote a fraudulent ballot, or vote more
 557 than once in an election, I can be convicted of a felony of the
 558 third degree and fined up to \$5,000 and/or imprisoned for up to
 559 5 years. I also understand that failure to sign this certificate
 560 will invalidate my ballot.

561
 562 . . . (Date) (Voter's Signature) . . .

563
 564 Note: Your Signature Must Be Witnessed by One Witness 18 Years
 565 of Age or Older as Provided in the Instruction Sheet.

566
 567 I swear or affirm that the voter signed this Voter's Certificate
 568 in my presence.

569
 570 . . . (Signature of Witness) . . .

571
 572 . . . (Printed Name of Witness) . . .

573
 574 . . . (Date) . . .

575
 576 . . . (Address) . . .

577 (2) The certificate shall be arranged on the back of the
 578 mailing envelope so that the line for the signature of the
 579 absent elector is across the seal of the envelope; however, no
 580 statement shall appear on the envelope which indicates that a

Page 20 of 42

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

578-03426-13 2013600c2

581 signature of the voter must cross the seal of the envelope. The
 582 absent elector and the attesting witness shall execute the
 583 certificate on the envelope. A candidate may not serve as an
 584 attesting witness.

585 (3) In lieu of the voter's certificate provided in this
 586 section, the supervisor of elections shall provide each person
 587 voting absentee under the Uniformed and Overseas Citizens
 588 Absentee Voting Act with the standard oath prescribed by the
 589 presidential designee with an appended section in substantially
 590 the following form:-

591 Witness signature and date:

592 ...(Signature of Witness)...

593 ...(Printed Name of Witness)...

594 ...(Address)...

595 ...(Date)...

600 Section 11. Section 101.65, Florida Statutes, is amended to
 601 read:

602 101.65 Instructions to absent electors.-The supervisor
 603 shall enclose with each absentee ballot separate printed
 604 instructions in substantially the following form:

605 READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING BALLOT.

606 1. VERY IMPORTANT. In order to ensure that your absentee
 607 ballot will be counted, it should be completed and returned as
 608 soon as possible so that it can reach the supervisor of
 609

578-03426-13 2013600c2

610 elections of the county in which your precinct is located no
 611 later than 7 p.m. on the day of the election. However, if you
 612 are an overseas voter casting a ballot in a presidential
 613 preference primary or general election, your absentee ballot
 614 must be postmarked or signed and dated no later than the date of
 615 the election and received by the supervisor of elections of the
 616 county in which you are registered to vote no later than 10 days
 617 after the date of the election.

618 2. Mark your ballot in secret as instructed on the ballot.
 619 You must mark your own ballot unless you are unable to do so
 620 because of blindness, disability, or inability to read or write.

621 3. Mark only the number of candidates or issue choices for
 622 a race as indicated on the ballot. If you are allowed to "Vote
 623 for One" candidate and you vote for more than one candidate,
 624 your vote in that race will not be counted.

625 4. Place your marked ballot in the enclosed secrecy
 626 envelope.

627 5. Insert the secrecy envelope into the enclosed mailing
 628 envelope which is addressed to the supervisor.

629 6. Seal the mailing envelope and completely fill out the
 630 Voter's Certificate on the back of the mailing envelope.

631 7. VERY IMPORTANT. In order for your absentee ballot to be
 632 counted, you must sign your name on the line above (Voter's
 633 Signature). An absentee ballot will be considered illegal and
 634 not be counted if the signature on the voter's certificate does
 635 not match the signature on record. The signature on file at the
 636 start of the canvass of the absentee ballots is the signature
 637 that will be used to verify your signature on the voter's
 638 certificate. If you need to update your signature for this

578-03426-13 2013600c2

639 election, send your signature update on a voter registration
 640 application to your supervisor of elections so that it is
 641 received no later than the start of the canvassing of absentee
 642 ballots, which occurs no earlier than the 15th day before
 643 election day.

644 8. VERY IMPORTANT. In order for your absentee ballot to be
 645 counted, it must include the signature and legible address of an
 646 attesting witness 18 years of age or older affixed to the
 647 Voter's Certificate. If the signature is illegible, the Voter's
 648 Certificate must also include a readable printed name of the
 649 attesting witness. A candidate may not serve as an attesting
 650 witness.

651 9.~~8~~ VERY IMPORTANT. If you are an overseas voter, you must
 652 include the date you signed the Voter's Certificate on the line
 653 above (Date) or your ballot may not be counted.

654 10.~~9~~ Mail, deliver, or have delivered the completed
 655 mailing envelope. Be sure there is sufficient postage if mailed.

656 11.~~10~~ FELONY NOTICE. It is a felony under Florida law to
 657 accept any gift, payment, or gratuity in exchange for your vote
 658 for a candidate. It is also a felony under Florida law to vote
 659 in an election using a false identity or false address, or under
 660 any other circumstances making your ballot false or fraudulent.

661 Section 12. Paragraphs (a) and (d) of subsection (1) of
 662 section 101.657, Florida Statutes, are amended to read:

663 101.657 Early voting.—

664 (1) (a) As a convenience to the voter, the supervisor of
 665 elections shall allow an elector to vote early in the main or
 666 branch office of the supervisor. The supervisor shall mark,
 667 code, indicate on, or otherwise track the voter's precinct for

578-03426-13 2013600c2

668 each early voted ballot. In order for a branch office to be used
 669 for early voting, it shall be a permanent facility of the
 670 supervisor and shall have been designated and used as such for
 671 at least 1 year prior to the election. The supervisor may also
 672 designate any city hall, ~~or~~ permanent public library facility,
 673 fairground, civic center, courthouse, county commission
 674 building, stadium, convention center, government-owned senior
 675 center, or government-owned community center as early voting
 676 sites; however, if so designated, the sites must be
 677 geographically located so as to provide all voters in the county
 678 an equal opportunity to cast a ballot, insofar as is
 679 practicable. In addition, a supervisor may designate one early
 680 voting site per election in an area of the county that does not
 681 have any of the eligible early voting locations. Such additional
 682 early voting site must be geographically located so as to
 683 provide all voters in that area with an equal opportunity to
 684 cast a ballot, insofar as is practicable. Each county shall, at
 685 a minimum, operate the same total number of early voting sites
 686 for a general election which the county operated for the 2012
 687 general election. The results or tabulation of votes cast during
 688 early voting may not be made before the close of the polls on
 689 election day. Results shall be reported by precinct.

690 (d) Early voting shall begin on the 10th day before an
 691 election that contains state or federal races and end on the 3rd
 692 day before the election, and shall be provided for no less than
 693 8 ~~6~~ hours and no more than 12 hours per day at each site during
 694 the applicable period. In addition, early voting may be offered
 695 at the discretion of the supervisor of elections on the 15th,
 696 14th, 13th, 12th, 11th, or 2nd day before an election that

578-03426-13 2013600c2

697 contains state or federal races for at least 8 hours per day,
 698 but not more than 12 hours per day. The supervisor of elections
 699 may provide early voting for elections that are not held in
 700 conjunction with a state or federal election. However, the
 701 supervisor has the discretion to determine the hours of
 702 operation of early voting sites in those elections.

703 Section 13. Subsection (2) of section 101.67, Florida
 704 Statutes, is amended to read:

705 101.67 Safekeeping of mailed ballots; deadline for
 706 receiving absentee ballots.—

707 (2) Except as provided in s. 101.6952(5), all marked absent
 708 electors' ballots to be counted must be received by the
 709 supervisor by 7 p.m. the day of the election. All ballots
 710 received thereafter shall be marked with the time and date of
 711 receipt and filed in the supervisor's office.

712 Section 14. Subsections (1) and (4) of section 101.68,
 713 Florida Statutes, are amended, and subsection (2) of that
 714 section is reenacted and amended, to read:

715 101.68 Canvassing of absentee ballot.—

716 (1) The supervisor of the county where the absent elector
 717 resides shall receive the voted ballot, at which time the
 718 supervisor shall compare the signature of the elector on the
 719 voter's certificate with the signature of the elector in the
 720 registration books or the precinct register to determine whether
 721 the elector is duly registered in the county and may record on
 722 the elector's registration certificate that the elector has
 723 voted. However, effective July 1, 2005, an elector who dies
 724 after casting an absentee ballot but on or before election day
 725 shall remain listed in the registration books until the results

578-03426-13 2013600c2

726 have been certified for the election in which the ballot was
 727 cast. The supervisor shall safely keep the ballot unopened in
 728 his or her office until the county canvassing board canvasses
 729 the vote. Except as provided in subsection (4), after an
 730 absentee ballot is received by the supervisor, the ballot is
 731 deemed to have been cast, and changes or additions may not be
 732 made to the voter's certificate.

733 (2) (a) The county canvassing board may begin the canvassing
 734 of absentee ballots at 7 a.m. on the 15th day before the
 735 election, but not later than noon on the day following the
 736 election. In addition, for any county using electronic
 737 tabulating equipment, the processing of absentee ballots through
 738 such tabulating equipment may begin at 7 a.m. on the 15th day
 739 before the election. However, notwithstanding any such
 740 authorization to begin canvassing or otherwise processing
 741 absentee ballots early, no result shall be released until after
 742 the closing of the polls in that county on election day. Any
 743 supervisor of elections, deputy supervisor of elections,
 744 canvassing board member, election board member, or election
 745 employee who releases the results of a canvassing or processing
 746 of absentee ballots prior to the closing of the polls in that
 747 county on election day commits a felony of the third degree,
 748 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

749 (b) To ensure that all absentee ballots to be counted by
 750 the canvassing board are accounted for, the canvassing board
 751 shall compare the number of ballots in its possession with the
 752 number of requests for ballots received to be counted according
 753 to the supervisor's file or list.

754 (c)1. The canvassing board shall, if the supervisor has not

578-03426-13

2013600c2

755 already done so, compare the signature of the elector on the
 756 voter's certificate or on the absentee ballot affidavit as
 757 provided in subsection (4) with the signature of the elector in
 758 the registration books or the precinct register to see that the
 759 elector is duly registered in the county and to determine the
 760 legality of that absentee ballot. The ballot of an elector who
 761 casts an absentee ballot shall be counted even if the elector
 762 dies on or before election day, as long as, prior to the death
 763 of the voter, the ballot was postmarked by the United States
 764 Postal Service, date-stamped with a verifiable tracking number
 765 by common carrier, or already in the possession of the
 766 supervisor of elections. An absentee ballot shall be considered
 767 illegal if the voter's certificate or absentee ballot affidavit
 768 ~~it~~ does not include the signature of the elector, as shown by
 769 the registration records or the precinct register, along with
 770 the signature and legible address of an attesting witness;
 771 however, if the signature of the attesting witness is illegible,
 772 the printed name of the attesting witness must clearly identify
 773 the name of the witness or the ballot shall be considered
 774 illegal. However, an absentee ballot ~~is~~ shall not be considered
 775 illegal if the signature of the elector does not cross the seal
 776 of the mailing envelope. If the canvassing board determines that
 777 any ballot is illegal, a member of the board shall, without
 778 opening the envelope, mark across the face of the envelope:
 779 "rejected as illegal." The absentee ballot affidavit, if
 780 applicable, the envelope and the ballot contained therein shall
 781 be preserved in the manner that official ballots voted are
 782 preserved.

783 2. If any elector or candidate present believes that an

578-03426-13

2013600c2

784 absentee ballot is illegal due to a defect apparent on the
 785 voter's certificate or the absentee ballot affidavit, he or she
 786 may, at any time before the ballot is removed from the envelope,
 787 file with the canvassing board a protest against the canvass of
 788 that ballot, specifying the precinct, the ballot, and the reason
 789 he or she believes the ballot to be illegal. A challenge based
 790 upon a defect in the voter's certificate or absentee ballot
 791 affidavit may not be accepted after the ballot has been removed
 792 from the mailing envelope.

793 (d) The canvassing board shall record the ballot upon the
 794 proper record, unless the ballot has been previously recorded by
 795 the supervisor. The mailing envelopes shall be opened and the
 796 secrecy envelopes shall be mixed so as to make it impossible to
 797 determine which secrecy envelope came out of which signed
 798 mailing envelope; however, in any county in which an electronic
 799 or electromechanical voting system is used, the ballots may be
 800 sorted by ballot styles and the mailing envelopes may be opened
 801 and the secrecy envelopes mixed separately for each ballot
 802 style. The votes on absentee ballots shall be included in the
 803 total vote of the county.

804 (4) (a) The supervisor of elections shall, on behalf of the
 805 county canvassing board, notify each elector whose ballot was
 806 rejected as illegal and provide the specific reason the ballot
 807 was rejected because of a difference between the elector's
 808 signature on the ballot and that on the elector's voter
 809 registration record. The supervisor shall mail a voter
 810 registration application to the elector to be completed
 811 indicating the elector's current signature if the elector's
 812 ballot was rejected due to a difference between the elector's

578-03426-13 2013600c2

813 signature on the voter's certificate or absentee ballot
 814 affidavit and the elector's signature in the registration books
 815 or precinct register. This section does not prohibit the
 816 supervisor from providing additional methods for updating an
 817 elector's signature.

818 (b) If the canvassing board has not begun the canvassing of
 819 absentee ballots pursuant to subsection (2), the supervisor
 820 shall allow an elector who has returned an absentee ballot that
 821 does not include the elector's signature to complete an
 822 affidavit in order to cure the unsigned absentee ballot.

823 (c) The elector shall provide identification to the
 824 supervisor and must complete an absentee ballot affidavit in
 825 substantially the following form:

826
 827 ABSENTEE BALLOT AFFIDAVIT

828 I, ..., am a qualified voter in this election and
 829 registered voter of ... County, Florida. I do solemnly swear or
 830 affirm that I requested and returned the absentee ballot and
 831 that I have not and will not vote more than one ballot in this
 832 election. I understand that if I commit or attempt any fraud in
 833 connection with voting, vote a fraudulent ballot, or vote more
 834 than once in an election, I may be convicted of a felony of the
 835 third degree and fined up to \$5,000 and imprisoned for up to 5
 836 years. I understand that my failure to sign this affidavit means
 837 that my absentee ballot will be invalidated.

838
 839 ...(Voter's Signature)...

840
 841 ...(Address)...

Page 29 of 42

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

578-03426-13 2013600c2

842
 843 Note: Your Signature Must Be Witnessed by One Witness 18 Years
 844 of Age or Older.

845
 846 I swear or affirm that the voter signed this Absentee
 847 Ballot Affidavit in my presence.

848
 849 ...(Signature of Witness)...

850
 851 ...(Printed Name of Witness)...

852
 853 ...(Date)...

854 ...(Address)...

855
 856 (d) Instructions must accompany the absentee ballot
 857 affidavit in substantially the following form:

858
 859 READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE
 860 AFFIDAVIT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR
 861 BALLOT NOT TO COUNT.

862
 863 1. In order to ensure that your absentee ballot will be
 864 counted, your affidavit should be completed and returned as soon
 865 as possible so that it can reach the supervisor of elections of
 866 the county in which your precinct is located no later than the
 867 start of the canvassing of absentee ballots, which occurs no
 868 earlier than the 15th day before an election.

869 2. You must sign your name on the line above (Voter's
 870 Signature).

Page 30 of 42

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

578-03426-13

2013600c2

871 3. You must have your signature witnessed by a person 18
 872 years of age or older. Have the witness sign on the line above
 873 (Signature of Witness) and include his or her legible address.
 874 If the signature is illegible, the affidavit must also include a
 875 readable, printed name of the attesting witness. A candidate may
 876 not serve as an attesting witness.

877 4. You must make a copy of one of the following forms of
 878 identification:

879 a. Identification which must include your name and
 880 photograph: United States passport; debit or credit card;
 881 military identification; student identification; retirement
 882 center identification; neighborhood association identification;
 883 or public assistance identification; or

884 b. Identification which shows your name and current
 885 residence address: current utility bill, bank statement,
 886 government check, paycheck, or government document (excluding
 887 voter identification card).

888 5. Place the envelope bearing the affidavit into a mailing
 889 envelope addressed to the supervisor. Insert a copy of your
 890 identification in the mailing envelope.

891 6. Mail, deliver, or have delivered the completed affidavit
 892 along with the copy of your identification to your county
 893 supervisor of elections. Be sure there is sufficient postage if
 894 mailed and that the supervisor's address is correct.

895 (e) The department and each supervisor shall include the
 896 affidavit and instructions on their respective websites. The
 897 supervisor must include his or her office's mailing address on
 898 the page containing the affidavit instructions; the department's
 899 instruction page must include the office mailing addresses of

578-03426-13

2013600c2

900 all supervisors of elections or provide a conspicuous link to
 901 such addresses.

902 (f) The supervisor shall attach each affidavit received to
 903 the appropriate absentee ballot mailing envelope.

904 Section 15. Subsections (3) and (4) of section 101.6921,
 905 Florida Statutes, are amended to read:

906 101.6921 Delivery of special absentee ballot to certain
 907 first-time voters.-

908 (3) The Voter's Certificate shall be in substantially the
 909 following form:

910
 911 Note: Please Read Instructions Carefully Before Marking Ballot
 912 and Completing Voter's Certificate.

913
 914 VOTER'S CERTIFICATE

915
 916 I, . . . , do solemnly swear or affirm that I am a qualified
 917 and registered voter of . . . County, Florida, and that I have
 918 not and will not vote more than one ballot in this election. I
 919 understand that if I commit or attempt to commit any fraud in
 920 connection with voting, vote a fraudulent ballot, or vote more
 921 than once in an election, I can be convicted of a felony of the
 922 third degree and fined up to \$5,000 and/or imprisoned for up to
 923 5 years. I also understand that failure to sign this certificate
 924 will invalidate my ballot. I understand that unless I meet one
 925 of the exemptions below, I must provide a copy of a current and
 926 valid identification as provided in the instruction sheet to the
 927 supervisor of elections in order for my ballot to count.

928 I further certify that I am exempt from the requirements to

578-03426-13

2013600c2

987 2. Mark your ballot in secret as instructed on the ballot.
 988 You must mark your own ballot unless you are unable to do so
 989 because of blindness, disability, or inability to read or write.
 990 3. Mark only the number of candidates or issue choices for
 991 a race as indicated on the ballot. If you are allowed to "Vote
 992 for One" candidate and you vote for more than one, your vote in
 993 that race will not be counted.
 994 4. Place your marked ballot in the enclosed secrecy
 995 envelope and seal the envelope.
 996 5. Insert the secrecy envelope into the enclosed envelope
 997 bearing the Voter's Certificate. Seal the envelope and
 998 completely fill out the Voter's Certificate on the back of the
 999 envelope.
 1000 a. You must sign your name on the line above (Voter's
 1001 Signature).
 1002 b. You must have your signature witnessed by a person 18
 1003 years of age or older. Have the witness sign on the line above
 1004 (Signature of Witness) and include his or her legible address.
 1005 If the signature is illegible, the Voter's Certificate must also
 1006 include a readable printed name of the attesting witness. A
 1007 candidate may not serve as an attesting witness.
 1008 ~~c.~~ If you are an overseas voter, you must include the
 1009 date you signed the Voter's Certificate on the line above (Date)
 1010 or your ballot may not be counted.
 1011 ~~d.~~ An absentee ballot will be considered illegal and will
 1012 not be counted if the signature on the Voter's Certificate does
 1013 not match the signature on record. The signature on file at the
 1014 start of the canvass of the absentee ballots is the signature
 1015 that will be used to verify your signature on the Voter's

Page 35 of 42

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

578-03426-13

2013600c2

1016 Certificate. If you need to update your signature for this
 1017 election, send your signature update on a voter registration
 1018 application to your supervisor of elections so that it is
 1019 received no later than the start of canvassing of absentee
 1020 ballots, which occurs no earlier than the 15th day before
 1021 election day.
 1022 6. Unless you meet one of the exemptions in Item 7., you
 1023 must make a copy of one of the following forms of
 1024 identification:
 1025 a. Identification which must include your name and
 1026 photograph: United States passport; debit or credit card;
 1027 military identification; student identification; retirement
 1028 center identification; neighborhood association identification;
 1029 or public assistance identification; or
 1030 b. Identification which shows your name and current
 1031 residence address: current utility bill, bank statement,
 1032 government check, paycheck, or government document (excluding
 1033 voter identification card).
 1034 7. The identification requirements of Item 6. do not apply
 1035 if you meet one of the following requirements:
 1036 a. You are 65 years of age or older.
 1037 b. You have a temporary or permanent physical disability.
 1038 c. You are a member of a uniformed service on active duty
 1039 who, by reason of such active duty, will be absent from the
 1040 county on election day.
 1041 d. You are a member of the Merchant Marine who, by reason
 1042 of service in the Merchant Marine, will be absent from the
 1043 county on election day.
 1044 e. You are the spouse or dependent of a member referred to

Page 36 of 42

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

578-03426-13 2013600c2

1045 in paragraph c. or paragraph d. who, by reason of the active
1046 duty or service of the member, will be absent from the county on
1047 election day.

1048 f. You are currently residing outside the United States.

1049 8. Place the envelope bearing the Voter's Certificate into
1050 the mailing envelope addressed to the supervisor. Insert a copy
1051 of your identification in the mailing envelope. DO NOT PUT YOUR
1052 IDENTIFICATION INSIDE THE SECRECY ENVELOPE WITH THE BALLOT OR
1053 INSIDE THE ENVELOPE WHICH BEARS THE VOTER'S CERTIFICATE OR YOUR
1054 BALLOT WILL NOT COUNT.

1055 9. Mail, deliver, or have delivered the completed mailing
1056 envelope. Be sure there is sufficient postage if mailed.

1057 10. FELONY NOTICE. It is a felony under Florida law to
1058 accept any gift, payment, or gratuity in exchange for your vote
1059 for a candidate. It is also a felony under Florida law to vote
1060 in an election using a false identity or false address, or under
1061 any other circumstances making your ballot false or fraudulent.

1062 Section 17. Subsection (5) is added to section 101.6952,
1063 Florida Statutes, to read:

1064 101.6952 Absentee ballots for absent uniformed services and
1065 overseas voters.—

1066 (5) An absentee ballot from an overseas voter in any
1067 presidential preference primary or general election which is
1068 postmarked or signed and dated no later than the date of the
1069 election and is received by the supervisor of elections of the
1070 county in which the overseas voter is registered no later than
1071 10 days after the date of the election shall be counted as long
1072 as the absentee ballot is otherwise proper.

1073 Section 18. Paragraphs (b) and (d) of subsection (4) of

578-03426-13 2013600c2

1074 section 102.031, Florida Statutes, are amended to read:

1075 102.031 Maintenance of good order at polls; authorities;
1076 persons allowed in polling rooms and early voting areas;
1077 unlawful solicitation of voters.—

1078 (4)

1079 (b) For the purpose of this subsection, the terms "solicit"
1080 or "solicitation" shall include, but not be limited to, seeking
1081 or attempting to seek any vote, fact, opinion, or contribution;
1082 distributing or attempting to distribute any political or
1083 campaign material, leaflet, or handout; conducting a poll except
1084 as specified in this paragraph; seeking or attempting to seek a
1085 signature on any petition; and selling or attempting to sell any
1086 item. The terms "solicit" or "solicitation" may ~~shall~~ not be
1087 construed to prohibit exit polling.

1088 (d) Except as provided in paragraph (a), the supervisor may
1089 not designate a no-solicitation zone or otherwise restrict
1090 access to any person, political committee, committee of
1091 continuous existence, candidate, or other group or organization
1092 for the purposes of soliciting voters. This paragraph applies to
1093 any public or private property used as a polling place or early
1094 voting site.

1095 Section 19. Subsections (1) and (4) of section 102.141,
1096 Florida Statutes, are amended to read:

1097 102.141 County canvassing board; duties.—

1098 (1) The county canvassing board shall be composed of the
1099 supervisor of elections; a county court judge, who shall act as
1100 chair; and the chair of the board of county commissioners.
1101 Alternate canvassing board members must be appointed pursuant to
1102 paragraph (e). In the event any member of the county canvassing

578-03426-13

2013600c2

1103 board is unable to serve, is a candidate who has opposition in
 1104 the election being canvassed, or is an active participant in the
 1105 campaign or candidacy of any candidate who has opposition in the
 1106 election being canvassed, such member shall be replaced as
 1107 follows:

1108 (a) If no county court judge is able to serve or if all are
 1109 disqualified, the chief judge of the judicial circuit in which
 1110 the county is located shall appoint as a substitute member a
 1111 qualified elector of the county who is not a candidate with
 1112 opposition in the election being canvassed and who is not an
 1113 active participant in the campaign or candidacy of any candidate
 1114 with opposition in the election being canvassed. In such event,
 1115 the members of the county canvassing board shall meet and elect
 1116 a chair.

1117 (b) If the supervisor of elections is unable to serve or is
 1118 disqualified, the chair of the board of county commissioners
 1119 shall appoint as a substitute member a member of the board of
 1120 county commissioners who is not a candidate with opposition in
 1121 the election being canvassed and who is not an active
 1122 participant in the campaign or candidacy of any candidate with
 1123 opposition in the election being canvassed. The supervisor,
 1124 however, shall act in an advisory capacity to the canvassing
 1125 board.

1126 (c) If the chair of the board of county commissioners is
 1127 unable to serve or is disqualified, the board of county
 1128 commissioners shall appoint as a substitute member one of its
 1129 members who is not a candidate with opposition in the election
 1130 being canvassed and who is not an active participant in the
 1131 campaign or candidacy of any candidate with opposition in the

Page 39 of 42

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

578-03426-13

2013600c2

1132 election being canvassed.

1133 (d) If a substitute member or alternate member cannot be
 1134 appointed as provided elsewhere in this subsection, or in the
 1135 event of a vacancy in such office, the chief judge of the
 1136 judicial circuit in which the county is located shall appoint as
 1137 a substitute member or alternate member a qualified elector of
 1138 the county who is not a candidate with opposition in the
 1139 election being canvassed and who is not an active participant in
 1140 the campaign or candidacy of any candidate with opposition in
 1141 the election being canvassed.

1142 (e)1. The chief judge of the judicial circuit in which the
 1143 county is located shall appoint a county court judge as an
 1144 alternate member of the county canvassing board or, if each
 1145 county court judge is unable to serve or is disqualified, shall
 1146 appoint an alternate member who is qualified to serve as a
 1147 substitute member under paragraph (a).

1148 2. The chair of the board of county commissioners shall
 1149 appoint a member of the board of county commissioners as an
 1150 alternate member of the county canvassing board or, if each
 1151 member of the board of county commissioners is unable to serve
 1152 or is disqualified, shall appoint an alternate member who is
 1153 qualified to serve as a substitute member under paragraph (d).

1154 3. If a member of the county canvassing board is unable to
 1155 participate in a meeting of the board, the chair of the county
 1156 canvassing board or his or her designee shall designate which
 1157 alternate member will serve as a member of the board in the
 1158 place of the member who is unable to participate at that
 1159 meeting.

1160 4. If not serving as one of the three members of the county

Page 40 of 42

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

578-03426-13

2013600c2

1161 canvassing board, an alternate member may be present, observe,
 1162 and communicate with the three members constituting the county
 1163 canvassing board, but may not vote in the board's decisions or
 1164 determinations.

1165 (4) (a) The supervisor of elections shall upload into the
 1166 county's election management system by 7 p.m. on the day before
 1167 the election the results of all early voting and absentee
 1168 ballots that have been canvassed and tabulated by the end of the
 1169 early voting period. Pursuant to ss. 101.5614(9), 101.657, and
 1170 101.68(2), the tabulation of votes cast or the results of such
 1171 uploads may not be made public before the close of the polls on
 1172 election day.

1173 (b) The canvassing board shall report all early voting and
 1174 all tabulated absentee results to the Department of State within
 1175 30 minutes after the polls close. Thereafter, the canvassing
 1176 board shall report, with the exception of provisional ballot
 1177 results, updated precinct election results to the department at
 1178 least every 45 minutes until all results are completely
 1179 reported. The supervisor of elections shall notify the
 1180 department immediately of any circumstances that do not permit
 1181 periodic updates as required. Results shall be submitted in a
 1182 format prescribed by the department.

1183 Section 20. Section 104.0616, Florida Statutes, is amended
 1184 to read:

1185 104.0616 Absentee ballots and voting; violations.—

1186 (1) For purposes of this section, the term "immediate
 1187 family" means a person's spouse or the parent, child,
 1188 grandparent, or sibling of the person or the person's spouse.

1189 (2) Any person who provides or offers to provide, and any

578-03426-13

2013600c2

1190 person who accepts, a pecuniary or other benefit in exchange for
 1191 distributing, ordering, requesting, collecting, delivering, or
 1192 otherwise physically possessing more than two absentee ballots
 1193 per election in addition to his or her own ballot or a ballot
 1194 belonging to an immediate family member, ~~with intent to alter,~~
 1195 ~~change, modify, or erase any vote on the absentee ballot,~~ except
 1196 as provided in ss. 101.6105-101.695, commits a felony of the
 1197 third degree, punishable as provided in s. 775.082, s. 775.083,
 1198 or s. 775.084.

1199 Section 21. This act shall take effect October 1, 2013.

THE FLORIDA SENATE APPEARANCE RECORD

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

9 Apr 13

Meeting Date

Topic Elections

Bill Number 600
(if applicable)

Name Charles Milsted

Amendment Barcode _____
(if applicable)

Job Title Associate State Director

Address 200 West College Avenue
Street

Phone 850-577-5190

Tallahassee FL 32301
City *State* *Zip*

E-mail cmilsted@aarp.org

Speaking: For Against Information

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Elections

Bill Number SB 600
(if applicable)

Name Jessica Lowe-Milor

Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address 407 Vinedge Rd
Street

Phone 850-228-3646

Tallahassee
City

FL 32303
State Zip

E-mail LWVExecutiveDirector@gmail.com

Speaking: For Against Information

Representing League of Women Voters of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/2013

Meeting Date

Topic Elections

Bill Number SB 600
(if applicable)

Name Brad Ashwell

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 1536 Chul's Lane
Street

Phone 850-294-1008

Tallahassee FL 32301
City State Zip

E-mail brad.ashwell@gmail.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

9-4-13

Meeting Date

Topic Elections

Bill Number 600
(if applicable)

Name Paul Lux

Amendment Barcode ~~891828~~
(if applicable)

Job Title Sup. of Elections

Address 196 Villacross Dr
Street
Crestview
City State Zip

Phone _____

E-mail _____

Speaking: For Against Information

Representing State Assoc of Sups of Elections

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

Department of Business and Professional Regulation is authorized to administer and enforce the Beverage Law.²

Three-Tier System

In many states, including Florida, the regulation of alcoholic beverages has traditionally been through what is termed the “three-tier” system.³ The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated.⁴ Each license classification has clearly delineated functions: retailers buy their products from distributors who in turn buy their products from manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is rooted in the perceived evils of the “tied house” in which a retail vendor, such as a bar, is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.⁵

In Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail. Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.⁶

There are some exceptions to this regulatory system. Exceptions include allowing brew pubs to manufacture malt beverages and sell them to consumers,⁷ allowing individuals to bring small quantities of alcohol back from out-of-state trips,⁸ and allowing in-state wineries to manufacture and sell directly to consumers.⁹

Limitation on the Size of Individual Wine Containers

Section 564.05, F.S., prohibits the sale of wine in individual containers holding more than 1 gallon of wine. However, distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.¹⁰

Wine Kegs

Wine kegs are stainless steel barrels that contain the equivalent of 26 bottles, which is equal to approximately 5.2 gallons. They are filled with wine and an inert gas to prevent the spoilage of the wine. Wine kegs are also reusable.¹¹ Some states, including California, Georgia, Texas, and

² Section 561.02, F.S.

³ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board* (June 2004), available at http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (Last visited March 12, 2013); see s. 561.14, F.S.

⁴ See s. 561.14, F.S.

⁵ Price, *supra* note 3.

⁶ Section 561.14(3), F.S. Vendors may also buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.

⁷ See s. 561.221(2), F.S.

⁸ See s. 562.16, F.S.

⁹ See s. 561.221(1), F.S.

¹⁰ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is a fine not to exceed \$500.

¹¹ Worobiec, MaryAnn, “Tapped In: Wine in Kegs,” *Wine Spectator* (Oct. 21, 2011), available at <http://www.winespectator.com/webfeature/show/id/45801> (last visited on February 28, 2013). According to proponents of the bill, 36 states permit the sale of wine kegs.

New York, permit retail vendors to sell wine from wine kegs. In Florida, retail vendors may not sell wine from wine kegs because of the 1 gallon limit on the sale of wine in s. 564.05, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 564.05, F.S., to permit the sale of wine in reusable containers of 5.16 gallons. The bill also provides that wine sold for off-premises consumption must be in the original, unopened container, unless otherwise permitted by law (such as, when wine is purchased at a restaurant with a meal and the bottle of remaining wine is taken home).

Section 2 provides that the bill takes effect July 1, 2013.

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:

Wine kegs may be more economical for restaurants to use in the sale of wine-by-the-glass. When a bottle of wine is opened, the contents are exposed to oxygen and the process of oxidation begins, which may spoil the wine. A vendor may risk losing money when the vendor opens a bottle for sale by-the-glass and then is unable to sell all of the wine in the bottle. Additionally, the transportation costs for wine kegs may be cheaper because they weigh less than the equivalent bottles. Wine kegs are also reusable.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Commerce and Tourism Committee on March 18, 2013:

The committee substitute amends s. 564.05, F.S., to permit the sale of wine in reusable containers of 5.16 gallons. It also provides that wine sold for off-premises consumption must be in the original, unopened container, unless otherwise permitted by law.

CS by Regulated Industries Committee on March 7, 2013:

The committee substitute amends s. 564.05, F.S., to permit the sale of wine in reusable containers of 5.16 gallons. The CS does not amend this section to increase the size of individual containers of wine that may be sold from one gallon to six gallons.

- B. **Amendments:**

None.

By the Committees on Commerce and Tourism; and Regulated Industries; and Senators Simpson, Ring, Brandes, Joyner, Hays, and Thompson

577-02588-13

2013658c2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A bill to be entitled

An act relating to wine; amending s. 564.05, F.S.; providing an exception to the maximum allowable capacity for individual containers of wine sold in this state; providing that, except as provided in s. 564.09, F.S., all wine containers sold or offered for sale at retail for consumption off the premises shall be in the original container; providing an effective date.

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

Section 1. Section 564.05, Florida Statutes, is amended to read:

564.05 Limitation of size of individual wine containers; penalty.—It is unlawful for any person to sell within this state any wine in individual containers holding more than 1 gallon of such wine unless such wine is in reusable containers holding 5.16 gallons. However, ~~Provided, that~~ qualified distributors and manufacturers may sell to other qualified distributors or manufacturers such wine in any size containers. Except as provided in s. 564.09, all wine sold or offered for sale by licensed vendors to be consumed off the premises shall be in the unopened original container. Any person convicted of a violation of this section commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 / 9 / 2013

Meeting Date

Topic _____

Bill Number 658
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13
Meeting Date

Topic WINE

Bill Number 658
(if applicable)

Name SLATER BAYLISS

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. MONROE ST. #602
Street

Phone 850-222-8900

TAIILANASSEE
City State Zip

E-mail swb@cardenasfarm.com

Speaking: For Against Information

Representing FREE FLOW WINE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

SENATOR WILTON SIMPSON

18th District

March 15, 2013

Senator John Thrasher, Chairman
Senate Rules Committee
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

RECEIVED

MAR 15 2013

SENATE
RULES COMMITTEE

Senator Thrasher,

Please place Senate Bill 658, relating to wine canisters, on the March 21, 2013, Rules Committee meeting agenda, *if received*.

Please contact my office with any questions.

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

Senator Wilton Simpson, 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 Rules

BILL: SB 604

INTRODUCER: Senator Bean

SUBJECT: Practitioners

DATE: March 29, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	Favorable
2.	Munroe	Cibula	JU	Favorable
3.	McElheney	Phelps	RC	Favorable
4.				
5.				
6.				

I. Summary:

SB 604 reorganizes the provisions relating to fees for organizations licensed or permitted and persons certified under part III of ch. 401, F.S., relating to medical transportation services. The bill directs fees collected for certification of emergency medical technicians (EMTs) and paramedics to be deposited into the Medical Quality Assurance Trust Fund, rather than the Emergency Medical Services Trust Fund.

The bill clarifies that the Department of Financial Services (DFS) must defend any claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief against an impaired practitioner consultant involving emergency interventions on behalf of impaired practitioners or students.

The bill expands access to the prescription drug monitoring program database to an impaired practitioner consultant upon consent of the impaired practitioner for the purpose of reviewing the impaired practitioner's controlled substance prescription history.

This bill substantially amends the following sections of the Florida Statutes: 401.34, 456.076, 893.055, and 893.0551.

II. Present Situation:

Emergency Medical Services

Part III of ch. 401, F.S., pertains to medical transportation services. Among other things, this part provides for the certification of a person to act as an EMT, paramedic, or 911 public safety

telecommunicator; licensing of an organization to provide basic life support (BLS) service, advanced life support (ALS) service, or air ambulance service; and permitting of vehicles to be operated as a basic support or advance support transport vehicle or an ALS nontransport vehicle providing BLS or ALS. Organizationally, this program is under the Division of Emergency Preparedness and Community Support (EPCS) within the Department of Health (DOH).

Fees for certification, licensing, and permitting must be deposited into the Emergency Medical Services Trust Fund and applied solely for salaries and expenses of the department incurred in implementing and enforcing part III of ch. 401, F.S.¹

Currently, the fees are used to:

- Process EMT and paramedic certification, recertification and testing;
- Fund 66 percent of the state EMS medical director's contracted salary; and
- Fund a portion of the salaries of 10 EMS staff members to:
 - License, permit, and inspect 274 ALS, BLS, and air medical service providers having 4,335 permitted vehicles;
 - Approve and inspect 71 EMT and paramedic training programs;
 - Oversee 32 EMT and paramedic recertification training programs; and
 - Provide administrative support.

The 10 EMS staff, through additional funding sources, also investigate complaints and discipline EMS providers, training programs, and 911 public safety telecommunicators. According to the DOH, funding provided by county courts per s. 318.21(2)(b), F.S., which is intended to fund 100 percent of the 10 EMS positions and the state EMS medical director, is inadequate to support these positions. Revenue from licensing fees for the 2-year, 2010-2012 licensure cycle totaled \$2,518,750 while expenses were approximately \$3,860,354.²

The EPCS and the Division of Medical Quality Assurance (MQA) have a Memorandum of Understanding in effect which authorizes the MQA to charge EPCS for services relating to the licensure of EMTs and paramedics. The charges derived from the MQA regulatory functions exceed the amount of funding EPCS receives from licensing revenues of EMTs and paramedics. The DEPCS reimburses MQA with available funding.³

Medical Quality Assurance Trust Fund

Funds credited to the Medical Quality Assurance Trust Fund consist of fees and fines related to the licensing of health care professionals. Funds must be used for the purpose of providing administrative support for the regulation of health care professionals and for other such purposes as may be appropriate pursuant to legislative appropriation.⁴

¹ See ss. 401.34 and 401.465(3), F.S.

² Department of Health Bill Analysis for SB 604 (March 1, 2013) (on file with the Senate Committee on Judiciary).

³ *Ibid.*

⁴ Section 20.435 (4), F.S.

Impaired Practitioner Treatment Program

Health care practitioners are regulated under various practice acts and the general regulatory provisions of ch. 456, F.S. Under s. 456.072(1)(z), F.S., disciplinary action may be taken against a licensed health care professional who is unable to practice with reasonable skill and safety due to illness; use of alcohol, drugs, narcotics, chemicals or any other type of material; or as the result of any mental or physical condition. The impaired practitioner treatment program was created to help treat practitioners who are impaired due to alcohol or substance abuse.

By entering and successfully completing the program, a practitioner may avoid formal disciplinary action by his or her board, if his or her only violation of the practice regulations is the impairment. Disciplinary action will not be taken if the practitioner acknowledges his or her impairment, voluntarily enrolls in an approved treatment program, and voluntarily withdraws from his or her practice or limits the scope of his or her practice as determined by the probable cause panel of the appropriate board until such time as the panel is satisfied that the practitioner has successfully completed the treatment program.⁵ To avoid discipline, the practitioner must also execute releases for medical records authorizing the release of all records of evaluation, diagnosis, and treatment to the impaired practitioner treatment program consultant.⁶

Section 456.076, F.S., requires the DOH to retain one or more impaired practitioner consultants to assist in determining whether a practitioner is impaired and to monitor the treatment of the impaired practitioner. An impaired practitioner consultant may also contract for services to be provided by a school for students enrolled in schools for licensure as allopathic physicians, physicians assistants, osteopathic physicians, nurses, or pharmacists who are alleged to be impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition.

The consultant must be a practitioner or recovered practitioner who is a Florida-licensed medical physician, osteopathic physician, physician assistant, anesthesiology assistant, or nurse. In the alternative, a consultant may be an entity employing a medical director who is so licensed. Consultants must refer impaired practitioners to department-approved treatment programs and providers.⁷ Although consultants do not provide medical treatment, they are required to make recommendations to the DOH regarding a practitioner's ability to practice.

The DOH currently contracts with the Intervention Project for Nurses (IPN) for licensed nurses and the Professional Resource Network (PRN) for all other licensed professions for impaired practitioner consultant services.

The relationship of PRN and IPN to the practitioner involves monitoring only and there is no doctor-patient relationship, therefore PRN and IPN consultants have no authority to access the Prescription Drug Monitoring Program database.

An impaired practitioner consultant, the consultant's officers and employees, and those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of

⁵ Section 456.076(3)(a), F.S.

⁶ *Id.*

⁷ *See* s. 456.076, F.S.

a licensee or student when the consultant is unable to perform the intervention are considered agents of the DOH for purposes of s. 768.28, F.S., (related to sovereign immunity) while acting within the scope of the consultant's duties under the contract with the DOH.⁸ The DFS currently defends any claim, suit, action or proceeding against the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student when the consultant is unable to perform the intervention if the act or omission arises out of and is in the scope of the consultant's contractual duties.⁹

Prescription Drug Monitoring Program

Chapter 2009-197, L.O.F, established the Prescription Drug Monitoring Program (PDMP) in s. 893.005, F.S. The PDMP is a comprehensive electronic system to monitor the prescribing and dispensing of certain controlled substances. Dispensers of certain controlled substances must report specified information to the PDMP, including the patient's name to whom the controlled substance is dispensed and other dispensing information.

Direct access to the PDMP is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists. Indirect access to the PDMP is provided to: (1) the DOH or its relevant health care regulatory boards; (2) the attorney general for Medicaid fraud cases; (3) a law enforcement agency; and (4) a patient or the legal guardian or designated health care surrogate of an incapacitated patient.

Section 893.0551, F.S., enacted at the same time, provides a public records exemption for personal information of a patient and certain information concerning health care professionals outlined in the statute. This section sets forth enumerated exceptions for disclosure of this information after the DOH ensures the legitimacy of the person's request for the information.

III. Effect of Proposed Changes:

Section 1 amends s. 401.34, F.S., reorganizing the provisions relating to license fees for EMTs and paramedics. All license fees for EMTs and paramedics that are currently deposited into the EMS trust fund will instead be deposited into the MQA trust fund.

Section 2 amends s. 456.076, F.S., providing that the DFS defend any claim suit, action, or proceeding, *including injunctive, affirmative, or declaratory relief*, against an impaired practitioner consultant involving emergency interventions on behalf of impaired practitioners when the consultant is unable to perform the intervention if the act or omission arises out of and is in the scope of the consultant's contractual duties. Thus, if an action for injunctive, affirmative, or declaratory relief is filed against an impaired practitioner consultant, the DFS has clear statutory authority to defend the action.

Sections 3 and 4 amends s. 893.055 and s. 893.0551, F.S., respectively, to define "impaired practitioner consultant" and expand access to the PDMP to impaired practitioner consultants upon consent of the impaired practitioner for the purpose of reviewing the impaired

⁸ Section 456.076(7)(a), F.S.

⁹ Section 456.076(7)(b), F.S.

practitioner's controlled substance prescription history. The bill authorizes impaired practitioner consultants to have direct access to the PDMP for the purpose of reviewing the controlled substance prescription history of an impaired practitioner who has agreed to be evaluated or monitored through the PDMP by the consultant.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Because this bill provides for release of information that is already confidential and exempt under s. 893.0551, F.S., to an impaired practitioner consultant, the bill is not subject to the requirements of s. 24, Article I of the State Constitution and ch. 119, F.S., related to creating or expanding a public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill deposits fees into the MQA trust fund which currently are deposited into the EMS trust fund. The bill does not specify what the funds will be used for or otherwise revise specific duties and responsibilities of the EMS program or the MQA. Revenue from licensing fees for 2010-2011 and 2011-2012 totaled \$2,518,750. Expenditures are currently \$3,860,354 (average from 2006-2012) for a 2-year period. Revenue and expenditures vary dramatically during a recertification year so the revenue and expenditure amounts reflect a 2-year period to show appropriate numbers.¹⁰

B. Private Sector Impact:

If an action for injunctive, affirmative, or declaratory relief is filed against an impaired practitioner consultant, the DFS has clear statutory authority to defend the action.

Impaired practitioners in the impaired practitioner treatment program will be able to authorize the consultant to use the PDMP as another tool to monitor the practitioner's progress in the treatment program.

¹⁰ *Supra*, fn 2

C. Government Sector Impact:

The licensure fees transferred to MQA under the bill will not be available to fund the salaries of the EMS positions and other expenses currently being incurred.

The DOH indicates that its rule pertaining to access the PDMP will need to be amended to address access to the database by impaired practitioner consultants.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the impaired practitioner consultant to access the PDMP for an impaired practitioner; however, it does not specifically authorize access for a student who is participating in the impaired practitioner treatment program. Given the sensitive nature of access to the PDMP, specifically including students participating in the impaired practitioner program might be appropriate.

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

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

None.

B. Amendments:

None.

By Senator Bean

4-00173D-13

2013604__

1 A bill to be entitled
 2 An act relating to practitioners; amending s. 401.34,
 3 F.S.; reorganizing provisions relating to license fees
 4 for certain practitioners; amending s. 456.076, F.S.;
 5 providing that the Department of Financial Services
 6 shall defend certain claims, suits, actions, or
 7 proceedings for injunctive, affirmative, or
 8 declaratory relief involving emergency interventions
 9 on behalf of impaired practitioners; amending s.
 10 893.055, F.S.; defining the term "impaired
 11 practitioner consultant"; providing that impaired
 12 practitioner consultants retained by the Department of
 13 Health have access to information in the prescription
 14 drug monitoring program's database in certain
 15 circumstances; amending s. 893.0551, F.S.; defining
 16 the term "impaired practitioner consultant"; allowing
 17 impaired practitioner consultants access to certain
 18 confidential information in the prescription drug
 19 monitoring program's database when necessary to
 20 evaluate or monitor a practitioner as part of a
 21 treatment program for impaired practitioners;
 22 providing an effective date.

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

25
 26 Section 1. Subsections (2) through (7) of section 401.34,
 27 Florida Statutes, are redesignated as subsections (3) through
 28 (8), respectively, subsection (1) of that section is amended,
 29 and a new subsection (2) is added, to read:

Page 1 of 6

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

4-00173D-13

2013604__

30 401.34 Fees.—
 31 (1) Each organization ~~or person~~ subject to this part must
 32 pay to the department the following nonrefundable fees:
 33 (a) Basic life support service license application: \$660,
 34 to be paid biennially.
 35 (b) Advanced life support service license application:
 36 \$1,375, to be paid biennially.
 37 (c) Original or renewal vehicle permit application for
 38 basic or advanced life support: \$25, to be paid biennially.
 39 (d) Air ambulance service application: \$1,375, to be paid
 40 biennially.
 41 (e) Original or renewal aircraft permit application for air
 42 ambulance: \$25, to be paid biennially.
 43 (2) Each person subject to this part must pay to the
 44 department the following nonrefundable fees, and these fees must
 45 be deposited into the Medical Quality Assurance Trust Fund:
 46 (a) ~~(d)~~ Emergency medical technician certification
 47 examination application: \$40.
 48 (b) ~~(e)~~ Emergency medical technician original certificate
 49 application: \$35.
 50 (c) ~~(f)~~ Emergency medical technician renewal certificate
 51 application: \$20, to be paid biennially.
 52 (d) ~~(g)~~ Paramedic certification examination application:
 53 \$40.
 54 (e) ~~(h)~~ Paramedic original certificate application: \$45.
 55 (f) ~~(i)~~ Paramedic renewal certificate application: \$45, to
 56 be paid biennially.
 57 ~~(j) Air ambulance service application: \$1,375, to be paid~~
 58 ~~biennially.~~

Page 2 of 6

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

4-00173D-13 2013604

59 ~~(k) Original or renewal aircraft permit application for air~~
60 ~~ambulance: \$25, to be paid biennially.~~

61 Section 2. Paragraph (b) of subsection (7) of section
62 456.076, Florida Statutes, is amended to read:

63 456.076 Treatment programs for impaired practitioners.-
64 (7)

65 (b) In accordance with s. 284.385, the Department of
66 Financial Services shall defend any claim, suit, action, or
67 proceeding, including a claim, suit, action, or proceeding for
68 injunctive, affirmative, or declaratory relief, against the
69 consultant, the consultant's officers or employees, or those
70 acting at the direction of the consultant for the limited
71 purpose of an emergency intervention on behalf of a licensee or
72 student as described in subsection (2) when the consultant is
73 unable to perform such intervention, which claim, suit, action,
74 or proceeding is brought as a result of an any act or omission
75 by any of the consultant's officers and employees and those
76 acting under the direction of the consultant for the limited
77 purpose of an emergency intervention on behalf of the a licensee
78 or student ~~as described in subsection (2)~~ when the consultant is
79 unable to perform such intervention, ~~if the~~ when such act or
80 omission arises out of and is in the scope of the consultant's
81 duties under its contract with the department.

82 Section 3. Paragraphs (f) through (j) of subsection (1) of
83 section 893.055, Florida Statutes, are redesignated as
84 paragraphs (g) through (k), respectively, a new paragraph (f) is
85 added to that subsection, and paragraph (b) of subsection (7) of
86 that section is amended, to read:

87 893.055 Prescription drug monitoring program.-

4-00173D-13 2013604

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

89 (f) "Impaired practitioner consultant" means a consultant
90 retained by the department under s. 456.076.

91 (7)

92 (b) 1. A pharmacy, prescriber, or dispenser shall have
93 access to information in the prescription drug monitoring
94 program's database which relates to a patient of that pharmacy,
95 prescriber, or dispenser in a manner established by the
96 department as needed for the purpose of reviewing the patient's
97 controlled substance prescription history.

98 2. An impaired practitioner consultant who is retained by
99 the department shall have access to information in the
100 prescription drug monitoring program's database, in a manner
101 established by the department, if:

102 a. The impaired practitioner has a documented or has
103 acknowledged history of controlled substance abuse.

104 b. The impaired practitioner agrees in writing to be
105 evaluated and monitored through the prescription drug monitoring
106 program.

107 c. The impaired practitioner consultant has access to only
108 those records of impaired practitioners who have provided
109 written consent.

110 3. Other access to the program's database shall be limited
111 to the program's manager and to the designated program and
112 support staff, who may act only at the direction of the program
113 manager or, in the absence of the program manager, as
114 authorized. Access by the program manager or such designated
115 staff is for prescription drug program management only or for
116 management of the program's database and its system in support

4-00173D-13 2013604
117 of the requirements of this section and in furtherance of the
118 prescription drug monitoring program. Confidential and exempt
119 information in the database shall be released only as provided
120 in paragraph (c) and s. 893.0551. The program manager,
121 designated program and support staff who act at the direction of
122 or in the absence of the program manager, and any individual who
123 has similar access regarding the management of the database from
124 the prescription drug monitoring program shall submit
125 fingerprints to the department for background screening. The
126 department shall follow the procedure established by the
127 Department of Law Enforcement to request a statewide criminal
128 history record check and to request that the Department of Law
129 Enforcement forward the fingerprints to the Federal Bureau of
130 Investigation for a national criminal history record check.

131 Section 4. Paragraphs (e) through (h) of subsection (1) of
132 section 893.0551, Florida Statutes, are redesignated as
133 paragraphs (f) through (i), respectively, a new paragraph (e) is
134 added to that subsection, and paragraph (h) is added to
135 subsection (3) of that section, to read:

136 893.0551 Public records exemption for the prescription drug
137 monitoring program.—

138 (1) For purposes of this section, the term:

139 (e) "Impaired practitioner consultant" has the same meaning
140 as provided in s. 893.055.

141 (3) The department shall disclose such confidential and
142 exempt information to the following entities after using a
143 verification process to ensure the legitimacy of that person's
144 or entity's request for the information:

145 (h) An impaired practitioner consultant who certifies in

4-00173D-13 2013604
146 writing that the information is necessary to evaluate or monitor
147 a practitioner as part of a treatment program for impaired
148 practitioners.

149 Section 5. This act shall take effect July 1, 2013.

110-SOB
9:00 AM

THE FLORIDA SENATE
APPEARANCE RECORD

WAIVE IN SUPPORT

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

4-9-2013

Meeting Date

Topic PRACTITIONERS

Bill Number SB 604
(if applicable)

Name STEPHER R. WINN

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHEE PARKWAY

Phone 878-7463

^{Street}
TALLAHASSEE FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Professional Resource Network

Bill Number 604 (if applicable)

Name Holly Miller

Amendment Barcode (if applicable)

Job Title Assistant General Counsel

Address Street

Phone

City

State

Zip

E-mail h.miller@flimail.com

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

Representing FMA

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

Lobbyist registered with Legislature: [X] Yes [] No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 402

INTRODUCER: Rules Committee and Senator Joyner

SUBJECT: Homelessness

DATE: April 9, 2013

REVISED: 03/07/13

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Favorable
2.	Everette	Eichin	TR	Fav/1 amendment
3.	Hendon	Phelps	RC	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 402 allows for a voluntary contribution to support grants to assist the homeless. Specifically, the bill:

- Authorizes the Department of Highway Safety and Motor Vehicles (DHSMV or department) to collect a voluntary contribution of \$1 through motor vehicle registration and driver license fees, both initial and renewal fees, to aid the homeless;
- Exempts the Department of Children and Family Services (DCF or department) and/or the State Office on Homelessness from the required \$10,000 to process the application;
- Replaces the current emergency assistance program with a newly-created homeless prevention grant program; and
- Limits the amount a lead agency may spend on administrative costs under a Challenge Grant.

The bill has an insignificant fiscal impact on the state and has an effective date of October 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 320.02, 322.08, 322.18, 420.622, and 420.625. This bill creates section 414.161 and repeals section 414.16, of the Florida Statutes.

II. Present Situation:

The Council on Homelessness and the State Office on Homelessness

The Council on Homelessness (council) and the State Office on Homelessness (office) were created in 2001 within the Department of Children and Families.¹ The 17-member council is comprised of representatives of state agencies, counties, homeless advocacy organizations, and volunteers.² The council is to develop policy and advise the office.³

The office coordinates state agency responses to homelessness, serves as a single point of contact on homeless issues in the state, and administers state-funded grant programs that support the activities of the 27 local homeless coalitions.⁴ The office administers all homelessness grants through lead agencies. The lead agency has the responsibility for continuum of care plans that help communities or regions envision, plan, and implement comprehensive and long-term solutions to the problem of homelessness.⁵ Lead agencies are also authorized applicants for the Challenge Grant and the Homeless Housing Assistance Grant.

Emergency Financial Assistance Program

This state grant program provides support to families, with at least one minor child, who are currently without shelter or face the loss of shelter because of the following:⁶

- Nonpayment of rent or mortgage resulting in eviction or notice of eviction;
- Household disaster that renders the home uninhabitable; or
- Other emergency situations defined in rule.

Families may receive up to \$400 during one period of 30 consecutive days in any 12 consecutive months.⁷ DCF serves approximately 2,000 families a year under this program and utilizes OPS staff to assess eligibility and process payments.⁸

Homeless Housing Assistance Grants

¹ Chapter 2001-98, Laws of Fla.

² Section 420.622, F.S.

³ Id.

⁴ Id.

⁵ Section 420.642, F.S.

⁶ Section 414.16, F.S.

⁷ Rule 65A-33.011, F.A.C.

⁸ Department of Children and Families Services, *Staff Analysis and Economic Impact. SB 1130* (Nov. 2, 2011) (On file with the Senate Committee on Children, Families, and Elder Affairs.)

This state grant program provides homeless housing assistance grants up to \$750,000 annually to lead agencies to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons.⁹ Administrative costs are capped at 5 percent of the funds awarded.¹⁰

Challenge Grant

This program provides grants of up to \$500,000 to lead agencies who have developed and implemented a local homeless assistance continuum of care plan. The plan must detail how outreach, emergency shelter, support services, and permanent shelter will be provided in the area.¹¹ The state currently has 28 local homeless continuum of care planning areas that receive state grants. Currently, state law does not provide for a limit on or use of grant funds for administrative costs incurred by lead agencies.

Voluntary Contributions

The voluntary contributions process provides the opportunity for citizens to make a donation by checking a box on a form when registering a vehicle or renewing a registration, as well as applying for a new replacement or driver license.¹²

An organization that desires to receive a voluntary contribution must be specifically authorized by Florida Statutes. Section 320.023, F.S., establishes requirements for organizations seeking to establish a voluntary contribution on motor vehicle registration application forms, and s. 322.081, F.S., establishes similar requirements for driver license applications. Both sections require the following:

- A request for the voluntary contribution being sought, describing the voluntary contribution in general terms;
- An application fee, not to exceed \$10,000 to defray the department's cost for reviewing the application and developing the voluntary contribution check off, if authorized. State funds may not be used to pay the application fee; and
- A marketing strategy outlining short-term and long-term marketing plans for the contribution and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues to be derived from the contributions.

This information must be submitted to DHSMV at least 90 days before the convening of the next regular session of the Legislature.

Chapter 2010-223, L.O.F., provides that DHSMV may not establish any new voluntary contributions on the motor vehicle registration application form under s. 320.023, F.S., or the driver license application form under s. 322.081, F.S., between July 1, 2010, and July 1, 2013. However, DHSMV may establish a voluntary contribution for an organization that has:

⁹ Section 420.622, F.S.

¹⁰ Id.

¹¹ Id.

¹² Currently, Section 320.02(8)(14) and (15), F.S.; Section 320.08047, F.S., and Section 328.72(11) and (16), F.S., provide motor vehicle registration applicants with 20 options for voluntary contributions. Section 322.08(7), F.S., provides driver license applicants with 15 options for voluntary contributions.

- Submitted a request to the department before May 1, 2010, to establish a voluntary contribution on a motor vehicle registration application under s. 320.023, F.S., or a driver license application under s. 322.081, F.S.; and
- Submitted a valid financial analysis, marketing strategy, and application fee before September 1, 2010; or
- Filed a bill during the 2010 Legislative Session to establish a voluntary contribution and have met the requirements of s. 320.023 or s. 322.081, F.S.¹³

III. Effect of Proposed Changes:

Voluntary Contributions

Sections 1, 2, and 3 of the bill authorize the collection of voluntary contributions in the amount of \$1.00 to be added to the motor vehicle and driver license fees — initial and renewal fees — to aid the homeless. The bill does not require that the voluntary contributions be subject to the procedures and limitations of ss. 320.023, F.S., and 322.081, F.S., including payment of the application fee. Funds will be placed in the Grants and Donations Trust Fund within the Department of Children and Families for use by the office to supplement Challenge Grants and Homeless Housing Assistance Grants and to provide information on homelessness to the public. There is currently a moratorium on the establishment of any new voluntary contributions on motor vehicle registration application and driver license application forms until July 1, 2013.¹⁴ According to the DHSMV, neither the Department of Children and Family Services nor the State Office of Homelessness has met the moratorium requirements set above.¹⁵

Grant Programs

Sections 4 through 7 of the bill repeal provisions relating to the Emergency Assistance Program and replace it with a Homelessness Prevention Grant Program. The new program will be administered by the Office on Homelessness at DCF, with the concurrence of the Council on Homelessness. The office may provide prevention grants through contracts with local lead agencies for homeless assistance continuums of care. The bill specifies the grant application process and certain preferences for applicants who can leverage additional funds and demonstrate effective programs. Eligibility for the grant program is limited to lead agencies who have implemented a local homeless assistance plan for their area. The grants are capped at \$300,000 and may be used to assist families facing the loss of their current home in paying past due rent and mortgage payments, past due utility bills, and case management. Program administrative costs are capped at 3 percent of the grant award.

The bill caps administrative costs for lead agencies administering Challenge Grants at 8 percent. Challenge Grant awards may be up to \$500,000 per lead agency.

Section 8 provides for an effective date of October 1, 2013.

¹³ Chapter 210-223, Laws of Fla.

¹⁴ This bill, however, circumvents the moratorium requirements in Sections 320.023 and 322.081, F.S.

¹⁵ Department of Highway Safety and Motor Vehicles. *Agency Bill Analysis SB 1130*. (November 15, 2011.) (On file with the Senate Committee on Children, Families, and Elder Affairs.)

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:

According to the Department of Children and Families, the voluntary contributions from motor vehicle registrations and renewals, and original or renewal driver licenses could provide an estimated \$20,000 in trust funds.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Fiscal Impact	Fiscal Year 2013-14		
Department Highway Safety and Motor Vehicles	GR	Trust	Total
Redesign forms	\$0	\$65,600	\$65,600
Review application	\$0	\$10,000	\$10,000
Total	\$0	\$75,600	\$75,600

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/SB 402 by Rules Committee on April 9, 2013:
Changed the bill’s effective date to October 1, 2013.

- B. **Amendments:**

None.

By Senator Joyner

19-00162B-13

2013402__

1 A bill to be entitled
 2 An act relating to homelessness; amending ss. 320.02,
 3 322.08, and 322.18, F.S.; requiring the motor vehicle
 4 registration form and registration renewal form, the
 5 driver license application form, and the driver
 6 license application form for renewal issuance or
 7 renewal extension to include an option to make a
 8 voluntary contribution to aid the homeless; providing
 9 for such contributions to be deposited into the Grants
 10 and Donations Trust Fund of the Department of Children
 11 and Families and used by the State Office on
 12 Homelessness for certain purposes; providing exemption
 13 from certain application fee requirements; providing
 14 that voluntary contributions for the homeless are not
 15 income of a revenue nature for the purpose of applying
 16 certain service charges; creating s. 414.161, F.S.;
 17 establishing a homelessness prevention grant program;
 18 requiring grant applicants to be ranked competitively;
 19 providing preference for certain grant applicants;
 20 providing eligibility requirements; providing grant
 21 limitations and restrictions; requiring lead agencies
 22 for local homeless assistance continuums of care to
 23 track, monitor, and report on assisted families for a
 24 specified period; amending s. 420.622, F.S.; limiting
 25 the percentage of funding that lead agencies may spend
 26 on administrative costs; amending s. 420.625, F.S.;
 27 deleting a cross-reference to conform; repealing s.
 28 414.16, F.S., relating to the emergency assistance
 29 program for families with children that have lost

Page 1 of 8

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

19-00162B-13

2013402__

30 shelter or face loss of shelter due to an emergency;
 31 transferring emergency assistance program funds to the
 32 homelessness prevention grant program; providing an
 33 effective date.
 34
 35 Be It Enacted by the Legislature of the State of Florida:
 36
 37 Section 1. Paragraph (s) is added to subsection (15) of
 38 section 320.02, Florida Statutes, to read:
 39 320.02 Registration required; application for registration;
 40 forms.-
 41 (15)
 42 (s) Notwithstanding s. 320.023, the application form for
 43 motor vehicle registration and renewal of registration must
 44 include language permitting a voluntary contribution of \$1 per
 45 applicant to aid the homeless. Contributions made pursuant to
 46 this paragraph shall be deposited into the Grants and Donations
 47 Trust Fund of the Department of Children and Families and used
 48 by the State Office on Homelessness to supplement grants made
 49 under s. 420.622(4) and (5), provide information to the public
 50 about homelessness in the state, and provide literature for
 51 homeless persons seeking assistance. The application fee
 52 required under s. 320.023 for an organization that seeks
 53 authorization to establish a voluntary contribution does not
 54 apply to this paragraph.
 55
 56 For the purpose of applying the service charge provided in s.
 57 215.20, contributions received under this subsection are not
 58 income of a revenue nature.

Page 2 of 8

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

19-00162B-13 2013402__

59 Section 2. Subsection (7) of section 322.08, Florida
60 Statutes, is amended to read:

61 322.08 Application for license; requirements for license
62 and identification card forms.—

63 (7) The application form for an original, renewal, or
64 replacement driver license or identification card shall include
65 language permitting the following:

66 (a) A voluntary contribution of \$1 per applicant, which
67 contribution shall be deposited into the Health Care Trust Fund
68 for organ and tissue donor education and for maintaining the
69 organ and tissue donor registry.

70 (b) A voluntary contribution of \$1 per applicant, which
71 contribution shall be distributed to the Florida Council of the
72 Blind.

73 (c) A voluntary contribution of \$2 per applicant, which
74 shall be distributed to the Hearing Research Institute,
75 Incorporated.

76 (d) A voluntary contribution of \$1 per applicant, which
77 shall be distributed to the Juvenile Diabetes Foundation
78 International.

79 (e) A voluntary contribution of \$1 per applicant, which
80 shall be distributed to the Children's Hearing Help Fund.

81 (f) A voluntary contribution of \$1 per applicant, which
82 shall be distributed to Family First, a nonprofit organization.

83 (g) A voluntary contribution of \$1 per applicant to Stop
84 Heart Disease, which shall be distributed to the Florida Heart
85 Research Institute, a nonprofit organization.

86 (h) A voluntary contribution of \$1 per applicant to Senior
87 Vision Services, which shall be distributed to the Florida

19-00162B-13 2013402__

88 Association of Agencies Serving the Blind, Inc., a not-for-
89 profit organization.

90 (i) A voluntary contribution of \$1 per applicant for
91 services for persons with developmental disabilities, which
92 shall be distributed to The Arc of Florida.

93 (j) A voluntary contribution of \$1 to the Ronald McDonald
94 House, which shall be distributed each month to Ronald McDonald
95 House Charities of Tampa Bay, Inc.

96 (k) Notwithstanding s. 322.081, a voluntary contribution of
97 \$1 per applicant, which shall be distributed to the League
98 Against Cancer/La Liga Contra el Cancer, a not-for-profit
99 organization.

100 (l) A voluntary contribution of \$1 per applicant to Prevent
101 Child Sexual Abuse, which shall be distributed to Lauren's Kids,
102 Inc., a nonprofit organization.

103 (m) A voluntary contribution of \$1 per applicant, which
104 shall be distributed to Prevent Blindness Florida, a not-for-
105 profit organization, to prevent blindness and preserve the sight
106 of the residents of this state.

107 (n) Notwithstanding s. 322.081, a voluntary contribution of
108 \$1 per applicant to the state homes for veterans, to be
109 distributed on a quarterly basis by the department to the State
110 Homes for Veterans Trust Fund, which is administered by the
111 Department of Veterans' Affairs.

112 (o) A voluntary contribution of \$1 per applicant to the
113 Disabled American Veterans, Department of Florida, which shall
114 be distributed quarterly to Disabled American Veterans,
115 Department of Florida, a nonprofit organization.

116 (p) A voluntary contribution of \$1 per applicant for Autism

19-00162B-13 2013402

117 Services and Supports, which shall be distributed to Achievement
118 and Rehabilitation Centers, Inc., Autism Services Fund.

119 (q) A voluntary contribution of \$1 per applicant to Support
120 Our Troops, which shall be distributed to Support Our Troops,
121 Inc., a Florida not-for-profit organization.

122 (r) Notwithstanding s. 322.081, a voluntary contribution of
123 \$1 per applicant to aid the homeless. Contributions made
124 pursuant to this paragraph shall be deposited into the Grants
125 and Donations Trust Fund of the Department of Children and
126 Families and used by the State Office on Homelessness to
127 supplement grants made under s. 420.622(4) and (5), provide
128 information to the public about homelessness in the state, and
129 provide literature for homeless persons seeking assistance.

130
131 A statement providing an explanation of the purpose of the trust
132 funds shall also be included. For the purpose of applying the
133 service charge provided in s. 215.20, contributions received
134 under paragraphs (b)-(r) ~~(b)-(q)~~ are not income of a revenue
135 nature.

136 Section 3. Subsection (9) is added to section 322.18,
137 Florida Statutes, to read:

138 322.18 Original applications, licenses, and renewals;
139 expiration of licenses; delinquent licenses.-

140 (9) The application form for a renewal issuance or renewal
141 extension shall include language permitting a voluntary
142 contribution of \$1 per applicant to aid the homeless.
143 Contributions made pursuant to this subsection shall be
144 deposited into the Grants and Donations Trust Fund of the
145 Department of Children and Families and used by the State Office

19-00162B-13 2013402

146 on Homelessness to supplement grants made under s. 420.622(4)
147 and (5), provide information to the public about homelessness in
148 the state, and provide literature for homeless persons seeking
149 assistance. For the purpose of applying the service charge
150 provided in s. 215.20, contributions received under this
151 subsection are not income of a revenue nature.

152 Section 4. Section 414.161, Florida Statutes, is created to
153 read:

154 414.161 Homelessness prevention grants.-

155 (1) ESTABLISHMENT OF PROGRAM.-There is created a grant
156 program to provide emergency financial assistance to families
157 facing the loss of their current home due to a financial or
158 other crisis. The State Office on Homelessness, with the
159 concurrence of the Council on Homelessness, may accept and
160 administer moneys appropriated to the Department of Children and
161 Families to provide homelessness prevention grants annually to
162 lead agencies for local homeless assistance continuums of care,
163 as recognized by the State Office on Homelessness. These moneys
164 shall consist of any sums that the state may appropriate, as
165 well as money received from donations, gifts, bequests, or
166 otherwise from any public or private source that is intended to
167 assist families to prevent them from becoming homeless.

168 (2) GRANT APPLICATIONS.-Grant applicants shall be ranked
169 competitively. Preference shall be given to applicants who
170 leverage additional private funds and public funds, who
171 demonstrate the effectiveness of their homelessness prevention
172 programs in keeping families housed, and who demonstrate the
173 commitment of other assistance and services to address family
174 health, employment, and education needs.

19-00162B-13 2013402__

175 (3) ELIGIBILITY.—In order to qualify for a grant, a lead
 176 agency must develop and implement a local homeless assistance
 177 continuum of care plan for its designated catchment area. The
 178 homelessness prevention program must be included in the
 179 continuum of care plan.

180 (4) GRANT LIMITS.—The maximum grant amount per lead agency
 181 may not exceed \$300,000. The grant assistance may be used to pay
 182 past due rent or mortgage payments, past due utility costs,
 183 provision of case management services, and program
 184 administration costs not to exceed 3 percent of the grant award.
 185 The homelessness prevention program must develop a case plan for
 186 each family to be assisted, setting forth what costs will be
 187 covered and the maximum level of assistance to be offered.

188 (5) PERFORMANCE.—The lead agency must track, monitor, and
 189 report on each family assisted for at least 12 months after the
 190 last assistance provided to the family. The goal for the
 191 homelessness prevention program is to enable at least 85 percent
 192 of the families assisted to remain in their homes and avoid
 193 becoming homeless during the ensuing year.

194 Section 5. Paragraph (d) is added to subsection (4) of
 195 section 420.622, Florida Statutes, to read:

196 420.622 State Office on Homelessness; Council on
 197 Homelessness.—

198 (4) Not less than 120 days after the effective date of this
 199 act, the State Office on Homelessness, with the concurrence of
 200 the Council on Homelessness, may accept and administer moneys
 201 appropriated to it to provide "Challenge Grants" annually to
 202 lead agencies for homeless assistance continuums of care
 203 designated by the State Office on Homelessness. A lead agency

19-00162B-13 2013402__

204 may be a local homeless coalition, municipal or county
 205 government, or other public agency or private, not-for-profit
 206 corporation. Such grants may be up to \$500,000 per lead agency.

207 (d) A lead agency may spend a maximum of 8 percent of its
 208 funding on administrative costs.

209 Section 6. Paragraph (d) of subsection (3) of section
 210 420.625, Florida Statutes, is amended to read:

211 420.625 Grant-in-aid program.—

212 (3) ESTABLISHMENT.—There is hereby established a grant-in-
 213 aid program to help local communities in serving the needs of
 214 the homeless through a variety of supportive services, which may
 215 include, but are not limited to:

216 (d) Emergency financial assistance for persons who are
 217 totally without shelter or facing loss of shelter, ~~but who are~~
 218 ~~not eligible for such assistance under s. 414.16.~~

219 Section 7. Section 414.16, Florida Statutes, is repealed,
 220 and any balances remaining in the emergency assistance program
 221 terminated by this act shall, on the date of termination, be
 222 transferred to the homelessness prevention grant program created
 223 under s. 414.161, Florida Statutes.

224 Section 8. This act shall take effect July 1, 2013.

18854321885432

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/08/2013	.	
	.	
	.	
	.	

The Committee on Transportation (Joyner) recommended the following:

Senate Amendment

Delete line 224
and insert:

Section 8. This act shall take effect October 1, 2013.

1
2
3
4
5
6
7
8

THE FLORIDA SENATE

APPEARANCE RECORD

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

9/4/2012
Meeting Date

Topic Homeless

Bill Number SB 402
(if applicable)

Name BRIAN Anderson

Amendment Barcode _____
(if applicable)

Job Title BSW student

Address 13304 Wheeler Dr

Phone _____

Street

Milson FL 34667

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9

Meeting Date

Topic Homelessness

Bill Number HB 93 / SB 402
(if applicable)

Name Gloriann Gaston

Amendment Barcode _____
(if applicable)

Job Title Student - UCF

Address 2848 Mulford Ave

Phone _____

Street

Winter Park FL 32789

City

State

Zip

E-mail ggaston@knights.
UCF.edu

Speaking: For Against Information

Representing UCF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic relating to Homelessness

Bill Number SB 402
(if applicable)

Name Takala Grice

Amendment Barcode _____
(if applicable)

Job Title Student - UNF

Address 2501 NW 41st #307

Phone 954-599-1466

Lauderhill FL 33313
City State Zip

E-mail takalagr20@gmail.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

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

This form is part of the public record for this meeting

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 9 2013
Meeting Date

Topic Homelessness

Bill Number SB 402
(if applicable)

Name Anton Armstrong

Amendment Barcode _____
(if applicable)

Job Title Student

Address 6495 Silk Leaf Lane
Street

Phone (904) 586-5635

Jacksonville FL 32244
City State Zip

E-mail unfemail80@gmail.com

Speaking: For Against Information

Representing University of North Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

04/09/13
Meeting Date

Topic Homelessness

Bill Number SB 402
(if applicable)

Name Ashiq Lambert

Amendment Barcode _____
(if applicable)

Job Title Sales

Address 206 Ave F SW
Street

Phone _____

Winter Haven, FL 33880
City State Zip

E-mail ashialambert@go.warner.edu

Speaking: For Against Information

Representing NASW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Homelessness

Bill Number SB402
(if applicable)

Name Jamie Giroux

Amendment Barcode _____
(if applicable)

Job Title Student

Address University of North Florida

Phone 904 674 1378

Street
Jacksonville FL
City State Zip

E-mail jamie.giroux1@gmail.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/2013
Meeting Date

Topic _____

Bill Number SB 402
(if applicable)

Name Nicole Murad

Amendment Barcode _____
(if applicable)

Job Title Student - University of North Florida

Address 10 000 Gate Parkway North Unit 921

Phone 954 401 0115

Jacksonville FL 32246
City State Zip

E-mail Nicole.Murad@gmail.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

This form is part of the public record for this meeting

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Homelessness

Bill Number SB 402
(if applicable)

Name Ross McDonough

Amendment Barcode _____
(if applicable)

Job Title Professor

Address 2500 Independence Dr.

Phone 904-240-5455

Street

Jacksonville Beach FL 32250

City

State

Zip

E-mail ross.mcdonough@unf.edu

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

This form is part of the public record for this meeting

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic Homelessness

Bill Number SB402
(if applicable)

Name Katy Linton

Amendment Barcode _____
(if applicable)

Job Title Student-university of North Florida

Address 401 Monument Rd #206
Street
Jacksonville, FL 32225
City *State* *Zip*

Phone 813 447 0030

E-mail klinton06@yahoo.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

04/09/13
Meeting Date

Topic Homelessness

Bill Number HB 93/SB 402
(if applicable)

Name Brandie Arrington

Amendment Barcode _____
(if applicable)

Job Title Whole Sales

Address 13895 HWY 27
Street

Phone (323) 216-8625

Lake Wales FL 33859
City State Zip

E-mail pr3ttypink@yahoo.com

Speaking: For Against Information

Representing NASW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

This form is part of the public record for this meeting

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic HOMELSSNESS

Bill Number SB 402
(if applicable)

Name RUTH BRANDWEIN

Amendment Barcode _____
(if applicable)

Job Title LEGISLATIVE CHAIR NASWFL

Address 1503 CLOWER CREEK DR.
Street

Phone 941-312-4786

SARASOTA FL 34231
City State Zip

E-mail rbrand24@aol.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Homelessness

Bill Number SB 402
(if applicable)

Name Penny Carlton Lau

Amendment Barcode _____
(if applicable)

Job Title MSW student

Address 315 E Lambright St

Phone 813 361 1603

Street

Tampa FL 33604

City

State

Zip

E-mail pclmscw@gmail.com

Speaking: For Against Information

Representing Social work professionals

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Homelessness

Bill Number SB 402
(if applicable)

Name Dawn Brown

Amendment Barcode _____
(if applicable)

Job Title Social Work Student - (National Assoc. of Social Workers)

Address 10212 Altavista Ave. Apt. 205

Phone _____

Street

Tampa FL 33647

City

State

Zip

E-mail dabrown0912@gmail.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

This form is part of the public record for this meeting

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Homelessness

Bill Number SB402
(if applicable)

Name Shannon Aguilar

Amendment Barcode _____
(if applicable)

Job Title Social Worker MSW

Address 3017 Forest Club Dr

Phone 813 967 6045

Plant City FL 33566
Street *City* *State* *Zip*

E-mail shannon.aguilar@
yahoo.com

Speaking: For Against Information

Representing NASW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13
Meeting Date

Topic Homelessness

Bill Number SB 402
(if applicable)

Name Sara Danell

Amendment Barcode _____
(if applicable)

Job Title BSW Student

Address 222 Lewfield Circle
Street

Phone (321) 960-1570

Winter Park FL 32792
City State Zip

E-mail sara.danell@gmail.com

Speaking: For Against Information

Representing UCF + NASW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

04/09/13

Meeting Date

Topic Homelessness

Bill Number HB 93/SB402
(if applicable)

Name Shalini Seneta

Amendment Barcode _____
(if applicable)

Job Title Social Work Student

Address 800 Daybreak Dr
Street

Phone 561-312-6407

Fruitland Park FL 34731
City State Zip

E-mail shalini.seneta@gmail.com

Speaking: For Against Information

Representing Saint Leo University

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Homelessness Bill Number SB 402 / HB 93
(if applicable)

Name Jessica Bayonet Amendment Barcode _____
(if applicable)

Job Title BSW Student Intern @ Tampa Housing Authority Youth & Family

Address 10005 N Hyacinth Ave Phone 813 360 4926
Street

Tampa FL 33612 E-mail jbayonet@me.com
City State Zip

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Homelessness

Bill Number 402
(if applicable)

Name FELY CURVA

Amendment Barcode _____
(if applicable)

Job Title Partner, Curva Assoc. LLC

Address 1212 Piedmont Dr.

Phone (850) 508-2256

Street

Tallahassee

City

FL

State

32312

Zip

E-mail curva@mindspring.com

Speaking: For Against Information wanted to support

Representing FL IMPACT & The Council of Churches

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 / 9 / 2013

Meeting Date

Topic _____

Bill Number 402
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations Subcommittee on General
Government
Ethics and Elections
Health Policy
Judiciary
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR ARTHENIA L. JOYNER
19th District

March 7, 2013

Senator John Thrasher, Chair
Senate Committee on Rules
402 Senate
404 S. Monroe Street
Tallahassee, FL 32399-1100

RECEIVED
MAR 07 2013
RULES COMMITTEE

Dear Chairman Lee:

This is to request that CS/Senate Bill 402, Homelessness, be placed on the agenda for the Committee on Rules. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 19

REPLY TO:

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

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 Rules

BILL: SB 832

INTRODUCER: Senator Joyner

SUBJECT: Powers of Attorney

DATE: March 29, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	Favorable
2.	McKay	McVaney	GO	Favorable
3.	Shankle	Phelps	RC	Favorable
4.				
5.				
6.				

I. Summary:

SB 832 makes a number of changes to chapter 709, F.S., concerning powers of attorney, which were recommended by the Real Property, Probate, and Trust Law Section of The Florida Bar. These changes:

- Make provisions of chapter 709, F.S., which apply to financial institutions expressly applicable to broker-dealers.
- Specify three powers given by a principal to an agent in which the laws governing powers of attorney do not apply.
- Allow a notary public to sign the principal’s name on a power of attorney document if the principal is physically unable to sign.
- Allow a third party to require an original power of attorney be provided for recording in official records if the power of attorney is relied on to transfer real property.
- Allow an agent with a power of attorney to delegate authority to a third person using a prescribed government form if the delegation is for a governmental purpose.
- Provide a standard for a court to award attorney fees in litigation involving a power of attorney.
- Allow a third party to require that an agent provide an affidavit stating whether the agent’s authority has been terminated by the filing of an action for dissolution of marriage of the agent and principal.
- Clarify when a rejection of a power of attorney by a third party must be in writing.
- Clarify that the default cap in existing law on the amount of gifts that an agent may give under a power of attorney applies to gifts given in a single a calendar year.

This bill substantially amends the following sections of the Florida Statutes: 709.2102, 709.2103, 709.2105, 709.2106, 709.2114, 709.2116, 709.2119, 709.2120, 709.2121, 709.2202, and 709.2208.

II. Present Situation:

Powers of Attorney Generally

A power of attorney is a legal document in which the client (the principal) authorizes a person or entity (the agent or attorney-in-fact)¹ to act on his or her behalf. The authority granted depends on the specific language of the power of attorney. A person giving a power of attorney may provide very broad authority (a general power of attorney) or may limit the authority to certain specific acts (a limited power of attorney).

A power of attorney expires automatically upon the principal becoming mentally ill or otherwise incapacitated.² However, a durable power of attorney remains in effect if the principal subsequently becomes incapacitated, but expires immediately if the principal is adjudicated legally incapacitated.³ Any power of attorney expires upon death of the principal or revocation by the principal.⁴

Uniform Power of Attorney Act

In 2006, the Uniform Law Commission of the National Conference of Commissioners on Uniform Laws promulgated the Uniform Power of Attorney Act (UPOAA). The catalyst for UPOAA was a national study which revealed a growing divergence in state power of attorney legislation. Since its completion thirteen states and one territory have adopted the UPOAA.⁵ The goal of the UPOAA is to promote uniformity and portability of powers of attorney across state lines.

The Florida Power of Attorney Act (the "Act"), was enacted effective October 1, 2011, and substantially re-wrote ch. 709, F.S., to conform to the Uniform Power of Attorney Act, with modifications.⁶

¹ Chapter 709, F.S., uses the term "attorney-in-fact" to describe a person granted authority pursuant to a power of attorney. This bill uses the term "agent" to describe a person granted authority pursuant to a power of attorney.

² A general power of attorney is the default power of attorney in this state.

³ See s. 709.2121, F.S.

⁴ *Id.*

⁵ See [http://www.uniformlaws.org/Act.aspx?title=Power of Attorney](http://www.uniformlaws.org/Act.aspx?title=Power%20of%20Attorney) for information regarding the UPOAA. Thirteen states are recognized as having adopted the Act and one state has proposed legislation to adopt the act this year. (Last visited March 9, 2013).

⁶ Chapter 2011-210, L.O.F.

Broker-dealers

Certain provisions of chapter 709, F.S., apply specifically to financial institutions:

- A written notice relating to the validity of a power of attorney to a financial institution must include the name, address, and last four digits of the principal's taxpayer identification number and be delivered to an officer or director of the financial institution.⁷
- A power of attorney that includes the statement that the agent has "authority to conduct investment transactions as provided in section 709.2208(2), Florida Statutes" grants general authority for a financial institution to handle, buy, and sell investment instruments.⁸
- A financial institution has 4-day limit on what is considered a reasonable time for it to reject or accept a power of attorney provided by an agent.⁹

A broker-dealer is an entity that is registered with the United States Securities and Exchange Commission or the Commodity Futures Trading Commission.¹⁰ These entities act similarly to financial institutions in the handling, buying, and selling of investment instruments, but chapter 709, F.S., does not specifically address whether the same provisions that apply to financial institutions also apply to broker-dealers.

Exceptions to when Powers of Attorney Apply

Section 709.2103, F.S., provides for four exceptions where chapter 709, F.S., does not apply to certain powers given by a principal to an agent that are encountered in common commercial contexts:

- A power created by an entity.
- A proxy or other delegation to exercise voting rights or management rights with respect to an entity.
- A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.
- A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction.¹¹

Execution Requirements

Under s. 709.2105, F.S., a power of attorney must be signed by the principal. The statutes do not accommodate a person who is unable to sign his or her name due to a physical disability, but who otherwise has the capacity to execute a power of attorney.¹²

⁷ Section 709.2121(3), F.S.

⁸ Section 709.2208(2), F.S.

⁹ Section 709.2120(1)(b), F.S.

¹⁰ U.S. Securities and Exchange Commission, *Guide to Broker-Dealer Registration*, <http://www.sec.gov/divisions/marketreg/bdguide.htm> (last visited Mar. 1, 2013).

¹¹ Section 709.2103, F.S.

¹² Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper Chapter 709 "Glitch" Bill* (2013) (on file with the Senate Committee on Judiciary).

Validity of Power of Attorney

Section 709.2106(5), F.S., allows a copy of a power of attorney to have the same effect as the original.¹³ However, title insurance agents are concerned that an original copy of the power of attorney must be recorded in the public records when real estate transfers are completed via a power of attorney.¹⁴ Section 709.2106, F.S., prevents title agents from requiring an original.

Delegation of Agent's Duties

A principal delegates authority to an agent to act for the principal by execution of the power of attorney. There are limited circumstances in which the agent is allowed to further delegate his or her authority to another person. Currently, an agent with a power of attorney is only allowed to delegate authority to act under the power of attorney to a third person for purposes of managing financial investments.¹⁵

Awarding Attorney Fees

Section 709.2116(3), F.S., allows a court to award attorney fees in proceedings involving disputes over a power of attorney. However, it does not provide guidance for a court to apply if making such an award.

Reliance on a Power of Attorney

Currently, before relying on a power of attorney, a third party may request that an agent provide an affidavit as to the validity of the power of attorney. The third party may require that the affidavit state, among other things, where the principal is domiciled, that the principal is not deceased, and that there has been no suspension of powers of attorney by the initiation of proceedings to determine incapacity.¹⁶ However, whether the agent's authority has been terminated by the filing of an action for dissolution of marriage between the agent and principal is not among the items a third party may require in an affidavit from an agent.

Refusal to Accept a Power of Attorney

Section 709.2120, F.S., identifies certain situations in which a third party may reject a power of a power of attorney. It also requires that any such rejection must be in writing and state the reason for rejection of the power of attorney.¹⁷ Based on the wording of s. 709.2120, F.S., the statute does not clearly indicate whether the requirement that the rejection be in writing apply to any of those situations.¹⁸ This leads to a possible interpretation that a written rejection is not required if a valid reason for rejection exists.

¹³ Section 709.2106(5), F.S.

¹⁴ Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 6.

¹⁵ Sections 709.2114 F.S., and 518.112, F.S.

¹⁶ Section 709.2119, F.S.

¹⁷ *Id.*

¹⁸ Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 6.

Authority to Make Gifts

A power of attorney may grant an agent the authority to make a gift of the principal's property to another individual. Unless the power of attorney otherwise provides, the agent's ability to make a gift of the principal's property is limited by a default amount equal to the annual exclusion amount for federal gift tax purposes.¹⁹

III. Effect of Proposed Changes:

Definitions

Section 1 amends s. 709.2102, F.S., to define the term "broker-dealer." The bill also amends ss. 709.2120 (**Section 8**), 709.2121 (**Section 9**), and 709.2208 (**Section 11**), F.S., to clarify that those sections apply to both financial institutions and broker-dealers.

The definition of "sign" is modified to clarify that the principal may use either a signature or a mark as evidence of execution.

A definition of "another state" has also been included as it relates to acceptance of powers of attorney executed in compliance with the laws of another state, territory, or insular possession of the United States.²⁰

Exceptions to when Powers of Attorney Apply

Section 2 amends s. 709.2103, F.S., creating three additional powers of attorney that chapter 709, F.S., does not apply to:

- A power given to a transfer agent to facilitate a specific transfer of stocks, bonds, or other financial instrument.
- A power authorizing a financial institution or broker-dealer to act as agent for the account owner in executing transfers of cash, securities, commodities, or other financial assets.
- A delegation of powers by a trustee as regulated by chapter 736, F.S., the Florida Trust Code.

Execution Requirements

Sections 3 and 10 amends ss. 703.2105 and 709.2202, F.S., respectively, to allow a notary public to sign a principal's name on a power of attorney document if the principal is physically unable to sign as long as the requirements for a notary providing services under s. 117.05(14), F.S., are met. These requirements include:

- The person with a disability directs the notary to sign in his or her presence.
- The document signing is witnessed by two disinterested persons.

¹⁹ Section 709.2202(3), F.S.

²⁰ "Insular" is defined as "of islands." <http://www.merriam-webster.com/dictionary/insular> (Last visited March 18, 2013). Currently, the insular possessions of the United States are the U.S. Virgin Islands, American Samoa, and Guam.

- The notary writes below the signature the following statement: “Signature affixed by notary, pursuant to s. 117.05(14), Florida Statutes,” and states the circumstances of the signing in the notarial certificate.²¹

Validity of Power of Attorney

Section 4 amends s. 709.2106, F.S., to allow a third party to require that an original power of attorney be provided for recording in official records if the power of attorney is relied on to transfer real property. The bill specifies the process by which a power of attorney can be recorded by the clerk of courts.

Delegation of Agent’s Duties

Section 5 amends s. 709.2114, F.S., to allow an agent with power of attorney to delegate authority to a third person using a prescribed government form if the delegation is for a governmental purpose. An example is the appointment of an agent for communication with the Internal Revenue Service using IRS Form 2848.²²

Awarding Attorney Fees

Section 6 amends s. 709.2116(3), F.S., to provide a standard for awarding attorney fees as in a chancery action. This standard provides that “a court of equity may, as justice requires, order that costs follow the result of the suit, apportion the costs between the parties, or require all costs be paid by the prevailing party.”²³ This standard gives a court full discretion in determining whether to make an award.

Reliance on a Power of Attorney

Section 7 amends s. 709.2119, F.S., to allow a third party, relying on a power of attorney, to require an affidavit from an agent stating whether the agent’s authority has been terminated by the filing of an action for dissolution or annulment of marriage of the agent and principal.

The bill also corrects a cross-reference.

Refusal to Accept a Power of Attorney

Section 8 amends s. 709.2120, F.S., to clarify that written notice of rejection is not required when the third person would not otherwise be required to engage in a transaction with the principal in the same circumstances and that written notice is required in all other circumstances.

²¹ Section 117.05(14), F.S.

²² Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 6.

²³ *Dayton v. Conger*, 448 So. 2d 609, 612 (Fla. 3d DCA 1984).

Authority to Make Gifts

Section 10 amends s. 709.2202, F.S., to clarify that the default cap amount of gifts is measured on a calendar year basis, the same as it is measured for federal gift tax purposes, which is \$14,000 per donee in 2013.²⁴

Effective Date

The bill takes effect upon becoming law.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁴ American Taxpayer Relief Act of 2012, Pub. Law No. 112-240, H.R. 8, 112th Cong. (Jan. 2, 2013).

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Joyner

19-00525A-13

2013832__

1 A bill to be entitled
 2 An act relating to powers of attorney; amending s.
 3 709.2102, F.S.; adding definitions; revising the
 4 definition of "sign"; amending s. 709.2103, F.S.;
 5 adding certain powers of attorney to which this part
 6 does not apply; amending s. 709.2105, F.S.;
 7 authorizing a notary public to sign the principal's
 8 name to the power of attorney under certain
 9 circumstances; amending s. 709.2106, F.S.; clarifying
 10 and revising language; providing that an original
 11 power of attorney, rather than a photocopy or
 12 electronic copy, may be required under certain
 13 circumstances; providing that an original power of
 14 attorney may be presented for recording in the
 15 official records for a fee; amending s. 709.2114,
 16 F.S.; adding exceptions to a provision that prohibits
 17 an agent who has accepted appointment from delegating
 18 authority to a third person; amending s. 709.2116,
 19 F.S.; providing for attorney fees and costs as in
 20 chancery actions; amending s. 709.2119, F.S.;
 21 authorizing a third person to require an agent to
 22 execute an affidavit stating that the agent's
 23 authority was not terminated because of certain
 24 circumstances; revising a sample form of an affidavit;
 25 revising a cross-reference; amending s. 709.2120,
 26 F.S.; revising language; providing a presumption of
 27 reasonable time to accept or reject a power of
 28 attorney for a broker-dealer; requiring a third person
 29 who rejects a power of attorney to state the reason in

Page 1 of 16

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

19-00525A-13

2013832__

30 writing unless a certain circumstance applies;
 31 amending s. 709.2121, F.S.; providing for notice to a
 32 broker-dealer; amending s. 709.2202, F.S.; conforming
 33 a cross-reference; authorizing a notary public to sign
 34 the principal's name to documents, other than the
 35 power of attorney, under certain circumstances;
 36 clarifying that certain gift amounts are based on the
 37 calendar year; specifying that a broker-dealer does
 38 not have a duty to inquire into certain actions by an
 39 agent and is not liable for relying in good faith on
 40 an agent's actions; amending s. 709.2208, F.S.;
 41 providing that an agent acquires general authority
 42 regarding securities held by a broker-dealer under
 43 certain circumstances; providing an effective date.
 44
 45 Be It Enacted by the Legislature of the State of Florida:
 46
 47 Section 1. Present subsections (2) through (12) of section
 48 709.2102, Florida Statutes, are redesignated as subsections (3)
 49 through (13), respectively, present subsection (13) of that
 50 section is redesignated as subsection (15), a new subsection (2)
 51 and a new subsection (14) are added to that section, and present
 52 subsection (12) of that section is amended to read:
 53 709.2102 Definitions.—As used in this part, the term:
 54 (2) "Broker-dealer" means a broker-dealer registered with
 55 the United States Securities and Exchange Commission or the
 56 Commodity Futures Trading Commission if the broker-dealer is
 57 acting in that capacity.
 58 (13)(12) "Sign" means having present intent to authenticate

Page 2 of 16

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

19-00525A-13 2013832__

59 or adopt a record to:

60 (a) Execute by signature or mark ~~adopt a tangible symbol~~;

61 or

62 (b) Attach to, or logically associate with the record an

63 electronic sound, symbol, or process.

64 (14) "Another state" means a state of the United States,

65 the District of Columbia, Puerto Rico, the United States Virgin

66 Islands, or any territory or insular possession subject to the

67 jurisdiction of the United States.

68 Section 2. Section 709.2103, Florida Statutes, is amended

69 to read:

70 709.2103 Applicability.—This part applies to all powers of

71 attorney except:

72 (1) A proxy or other delegation to exercise voting rights

73 or management rights with respect to an entity;

74 (2) A power created on a form prescribed by a government or

75 governmental subdivision, agency, or instrumentality for a

76 governmental purpose;

77 (3) A power to the extent it is coupled with an interest in

78 the subject of the power, including a power given to or for the

79 benefit of a creditor in connection with a credit transaction;

80 ~~and~~

81 (4) A power created by a person other than an individual;

82 (5) A power given to a transfer agent to facilitate a

83 specific transfer or disposition of one or more identified

84 stocks, bonds, or other financial instruments;

85 (6) A power authorizing a financial institution or broker-

86 dealer, or an employee of the financial institution or broker-

87 dealer, to act as agent for the account owner in executing

19-00525A-13 2013832__

88 trades or transfers of cash, securities, commodities, or other

89 financial assets in the regular course of business; and

90 (7) A delegation of powers by a trustee in accordance with

91 s. 736.0807.

92 Section 3. Subsection (3) is added to section 709.2105,

93 Florida Statutes, to read:

94 709.2105 Qualifications of agent; execution of power of

95 attorney.—

96 (3) If the principal is physically unable to sign the power

97 of attorney, the notary public before whom the principal's oath

98 or acknowledgment is made may sign the principal's name on the

99 power of attorney pursuant to s. 117.05(14).

100 Section 4. Subsections (3) and (5) of section 709.2106,

101 Florida Statutes, are amended, and subsection (6) is added to

102 that section, to read:

103 709.2106 Validity of power of attorney.—

104 (3) A power of attorney executed in another state which

105 does not comply with the execution requirements of this part is

106 valid in this state if, when the power of attorney was executed,

107 the power of attorney and its execution complied with the law of

108 the state of execution. A third person who is requested to

109 accept a power of attorney that is valid in this state solely

110 because of this subsection may in good faith request, and rely

111 upon, without further investigation, an opinion of counsel as to

112 any matter of law concerning the power of attorney, including

113 the due execution and validity of the power of attorney. An

114 opinion of counsel requested under this subsection must be

115 provided at the principal's expense. A third person may reject

116 ~~accept~~ a power of attorney that is valid in this state solely

19-00525A-13

2013832__

117 because of this subsection if the agent does not provide the
 118 requested opinion of counsel, and in such case, a third person
 119 has no liability for ~~rejecting~~ ~~refusing to accept~~ the power of
 120 attorney. This subsection does not affect any other rights of a
 121 third person who is requested to accept the power of attorney
 122 under this part, or any other provisions of applicable law.

123 (5) Except as otherwise provided in the power of attorney,
 124 a photocopy or electronically transmitted copy of an original
 125 power of attorney has the same effect as the original.
 126 Notwithstanding the provisions of this subsection, an original
 127 power of attorney that is relied upon to affect the title to
 128 real property may be required for recording in the official
 129 records.

130 (6) An original of a properly executed power of attorney
 131 may be presented to the clerk of the circuit court for recording
 132 in the official records, as provided under s. 28.222, upon
 133 payment of a service charge, as provided under s. 28.24.

134 Section 5. Subsection (1) of section 709.2114, Florida
 135 Statutes, is amended to read:

136 709.2114 Agent's duties.—

137 (1) An agent is a fiduciary. Notwithstanding the provisions
 138 in the power of attorney, an agent who has accepted appointment:

139 (a) Must act only within the scope of authority granted in
 140 the power of attorney. In exercising that authority, the agent:

141 1. May not act contrary to the principal's reasonable
 142 expectations actually known by the agent;

143 2. Must act in good faith;

144 3. May not act in a manner that is contrary to the
 145 principal's best interest, except as provided in paragraph

19-00525A-13

2013832__

146 (2) (d) and s. 709.2202; and

147 4. Must attempt to preserve the principal's estate plan, to
 148 the extent actually known by the agent, if preserving the plan
 149 is consistent with the principal's best interest based on all
 150 relevant factors, including:

151 a. The value and nature of the principal's property;

152 b. The principal's foreseeable obligations and need for
 153 maintenance;

154 c. Minimization of taxes, including income, estate,
 155 inheritance, generation-skipping transfer, and gift taxes;

156 d. Eligibility for a benefit, a program, or assistance
 157 under a statute or rule; and

158 e. The principal's personal history of making or joining in
 159 making gifts;

160 (b) May not delegate authority to a third person except as
 161 authorized under ~~provided in~~ s. 518.112 or this part, or by
 162 executing a power of attorney on a form prescribed by a
 163 government or governmental subdivision, agency, or
 164 instrumentality for a governmental purpose;

165 (c) Must keep a record of all receipts, disbursements, and
 166 transactions made on behalf of the principal; and

167 (d) Must create and maintain an accurate inventory each
 168 time the agent accesses the principal's safe-deposit box, if the
 169 power of attorney authorizes the agent to access the box.

170 Section 6. Subsection (3) of section 709.2116, Florida
 171 Statutes, is amended to read:

172 709.2116 Judicial relief; conflicts of interests.—

173 (3) In any proceeding commenced by filing a petition under
 174 this section, including, but not limited to, the unreasonable

19-00525A-13 2013832

175 refusal of a third person to allow an agent to act pursuant to
 176 the power of attorney, and in challenges to the proper exercise
 177 of authority by the agent, the court shall award reasonable
 178 attorney ~~attorney's~~ fees and costs as in chancery actions.

179 Section 7. Subsections (2) and (3) of section 709.2119,
 180 Florida Statutes, are amended to read:

181 709.2119 Acceptance of and reliance upon power of
 182 attorney.—

183 (2) A third person may require:

184 (a) An agent to execute an affidavit stating where the
 185 principal is domiciled; that the principal is not deceased; that
 186 there has been no revocation, or partial or complete termination
 187 by adjudication of incapacity or by the occurrence of an event
 188 referenced in the power of attorney; that there has been no
 189 suspension by initiation of proceedings to determine incapacity,
 190 or to appoint a guardian, of the principal; that the agent's
 191 authority has not been terminated by the filing of an action for
 192 dissolution or annulment of marriage, or legal separation of the
 193 agent and principal; and, if the affiant is a successor agent,
 194 the reasons for the unavailability of the predecessor agents, if
 195 any, at the time the authority is exercised.

196 (b) An officer of a financial institution acting as agent
 197 to execute a separate affidavit, or include in the form of the
 198 affidavit, the officer's title and a statement that the officer
 199 has full authority to perform all acts and enter into all
 200 transactions authorized by the power of attorney for and on
 201 behalf of the financial institution in its capacity as agent.

202 (c) A written affidavit executed by the agent under this
 203 subsection may, but need not, be in the following form:

19-00525A-13 2013832

204
 205 STATE OF.....
 206 COUNTY OF.....
 207

208 Before me, the undersigned authority, personally appeared
 209 ~~...(agent)(attorney in fact)...~~ ("Affiant"), who swore or
 210 affirmed that:

- 211 1. Affiant is the agent ~~attorney in fact~~ named in the
 212 ~~Durable~~ Power of Attorney executed by ...(principal)...
 213 ("Principal") on ...(date)....
- 214 2. This Power of Attorney is currently exercisable by
 215 Affiant. The principal is domiciled in ...(insert name of state,
 216 territory, or foreign country)....
- 217 3. To the best of Affiant's knowledge after diligent search
 218 and inquiry:
 - 219 a. The Principal is not deceased;
 - 220 b. Affiant's authority has not been suspended by initiation
 221 of proceedings to determine incapacity or to appoint a guardian
 222 or a guardian advocate;
 - 223 c. Affiant's authority has not been terminated by the
 224 filing of an action for dissolution or annulment of Affiant's
 225 marriage to the principal, or their legal separation; and
 226 ~~d.e-~~ There has been no revocation, or partial or complete
 227 termination, of the power of attorney or of Affiant's authority.
 - 228 4. Affiant is acting within the scope of authority granted
 229 in the power of attorney.
 - 230 5. Affiant is the successor to ...(insert name of
 231 predecessor agent)..., who has resigned, died, become
 232 incapacitated, is no longer qualified to serve, has declined to

19-00525A-13 2013832__

233 serve as agent, or is otherwise unable to act, if applicable.
 234 6. Affiant agrees not to exercise any powers granted by the
 235 ~~Durable~~ Power of Attorney if Affiant attains knowledge that the
 236 power of attorney ~~it~~ has been revoked, has been partially or
 237 completely terminated or suspended, or is no longer valid
 238 because of the death or adjudication of incapacity of the
 239 Principal.

240
 241
 242 ... (Affiant) ...

243
 244 Sworn to (or affirmed) and subscribed before me this
 245 day of ...(month)..., ...(year)..., by ...(name of person making
 246 statement)...

247
 248 ...(Signature of Notary Public-State of Florida) ...
 249
 250 ...(Print, Type, or Stamp Commissioned Name of Notary Public) ...
 251
 252 Personally Known OR Produced Identification
 253 ...(Type of Identification Produced) ...
 254

255 (3) A third person who is asked to accept a power of
 256 attorney that appears to be executed in accordance with s.
 257 709.2105 ~~s. 709.2103~~ may in good faith request, and rely upon,
 258 without further investigation:
 259 (a) A certified ~~verified~~ English translation of the power
 260 of attorney if the power of attorney contains, in whole or in
 261 part, language other than English;

19-00525A-13 2013832__

262 (b) An opinion of counsel as to any matter of law
 263 concerning the power of attorney if the third person making the
 264 request provides in a writing or other record the reason for the
 265 request; or
 266 (c) The affidavit described in subsection (2).
 267 Section 8. Section 709.2120, Florida Statutes, is amended
 268 to read:
 269 709.2120 Rejecting a Refusal to accept power of attorney.-
 270 (1) ~~Except as provided in subsection (2):~~
 271 ~~(a)~~ A third person must accept or reject a power of
 272 attorney within a reasonable time. ~~A third person who rejects a~~
 273 ~~power of attorney must state in writing the reason for the~~
 274 ~~rejection.~~
 275 ~~(b)~~ Four days, excluding Saturdays, Sundays, and legal
 276 holidays, are presumed to be a reasonable time for a financial
 277 institution or broker-dealer to accept or reject a power of
 278 attorney with respect to:
 279 (a) ~~1-~~ A banking transaction, if the power of attorney
 280 expressly contains authority to conduct banking transactions
 281 pursuant to s. 709.2208(1); or
 282 (b) ~~2-~~ An investment ~~A security~~ transaction, if the power of
 283 attorney expressly contains authority to conduct investment
 284 ~~security~~ transactions pursuant to s. 709.2208(2).
 285 (2) ~~(c)~~ A third person may not require an additional or
 286 different form of power of attorney for authority granted in the
 287 power of attorney presented.
 288 (3) A third person who rejects a power of attorney for any
 289 reason other than as provided in paragraph (4)(a) must state in
 290 writing the reason for the rejection.

19-00525A-13

2013832

291 ~~(4)(2)~~ A third person is not required to accept a power of
292 attorney if:

293 (a) The third person is not otherwise required to engage in
294 a transaction with the principal in the same circumstances;

295 (b) The third person has knowledge of the termination or
296 suspension of the agent's authority or of the power of attorney
297 before exercising the power;

298 (c) A timely request by the third person for an affidavit,
299 English translation, or opinion of counsel under s. 709.2119(4)
300 is refused by the agent;

301 (d) Except as provided in paragraph (b), the third person
302 believes in good faith that the power is not valid or that the
303 agent does not have authority to perform the act requested; or

304 (e) The third person makes, or has knowledge that another
305 person has made, a report to the local adult protective services
306 office stating a good faith belief that the principal may be
307 subject to physical or financial abuse, neglect, exploitation,
308 or abandonment by the agent or a person acting for or with the
309 agent.

310 ~~(5)(3)~~ A third person who, in violation of this section,
311 ~~rejects~~ ~~refuses to accept~~ a power of attorney is subject to:

312 (a) A court order mandating acceptance of the power of
313 attorney; and

314 (b) Liability for damages, including reasonable attorney's
315 fees and costs, incurred in any action or proceeding that
316 confirms, for the purpose tendered, the validity of the power of
317 attorney or mandates acceptance of the power of attorney.

318 Section 9. Subsection (3) of section 709.2121, Florida
319 Statutes, is amended to read:

Page 11 of 16

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

19-00525A-13

2013832

320 709.2121 Notice.—

321 (3) Notice to a financial institution or broker-dealer must
322 contain the name, address, and the last four digits of the
323 principal's taxpayer identification number and be directed to an
324 officer or a manager of the financial institution or broker-
325 dealer in this state.

326 Section 10. Present subsections (2) through (5) of section
327 709.2202, Florida Statutes, are redesignated as subsections (3)
328 through (6), respectively, a new subsection (2) is added to that
329 section, and present subsections (1), (3), and (4) of that
330 section are amended to read:

331 709.2202 Authority that requires separate signed
332 enumeration.—

333 (1) Notwithstanding s. 709.2201, an agent may exercise the
334 following authority only if the principal signed or initialed
335 next to each specific enumeration of the authority, the exercise
336 of the authority is consistent with the agent's duties under s.
337 709.2114, and the exercise is not otherwise prohibited by
338 another agreement or instrument:

339 (a) Create an inter vivos trust;

340 (b) With respect to a trust created by or on behalf of the
341 principal, amend, modify, revoke, or terminate the trust, but
342 only if the trust instrument explicitly provides for amendment,
343 modification, revocation, or termination by the settlor's agent;

344 (c) Make a gift, subject to subsection ~~(4)(3)~~;

345 (d) Create or change rights of survivorship;

346 (e) Create or change a beneficiary designation;

347 (f) Waive the principal's right to be a beneficiary of a
348 joint and survivor annuity, including a survivor benefit under a

Page 12 of 16

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

19-00525A-13 2013832__

349 retirement plan; or

350 (g) Disclaim property and powers of appointment.

351 (2) In addition to signing the power of attorney on behalf

352 of the principal pursuant to s. 709.2105(3), if the principal is

353 physically unable to sign or initial next to any enumerated

354 authority for which subsection (1) requires the principal to

355 sign or initial, the notary public before whom the principal's

356 oath or acknowledgment is made may sign the principal's name or

357 initials if:

358 (a) The principal directs the notary to sign the

359 principal's name or initials on the power of attorney next to

360 any enumerated authority for which subsection (1) requires the

361 principal to sign or initial;

362 (b) The signing or initialing by the notary is done in the

363 presence of the principal and witnessed by two disinterested

364 subscribing witnesses; and

365 (c) The notary writes the statement "Signature or initials

366 affixed by notary, pursuant to s. 709.2202(2), Florida Statutes"

367 below each signature or initial that the notary writes on behalf

368 of the principal. Only one notarial certificate, in

369 substantially the same form as provided in s. 117.05(14), which

370 states the circumstances of all signatures and initials written

371 by the notary public, is required to be completed by the notary

372 public.

373 (4)(3) Unless the power of attorney otherwise provides, a

374 provision in a power of attorney granting general authority with

375 respect to gifts authorizes the agent to only:

376 (a) Make outright to, or for the benefit of, a person a

377 gift of any of the principal's property, including by the

19-00525A-13 2013832__

378 exercise of a presently exercisable general power of appointment

379 held by the principal, in an amount per donee per calendar year,

380 not to exceed the annual dollar limits of the federal gift tax

381 exclusion under 26 U.S.C. s. 2503(b), as amended, without regard

382 to whether the federal gift tax exclusion applies to the gift,

383 or if the principal's spouse agrees to consent to a split gift

384 pursuant to 26 U.S.C. s. 2513, as amended, in an amount per

385 donee per calendar year, not to exceed twice the annual federal

386 gift tax exclusion limit; and

387 (b) Consent, pursuant to 26 U.S.C. s. 2513, as amended, to

388 the splitting of a gift made by the principal's spouse in an

389 amount per donee per calendar year, not to exceed the aggregate

390 annual gift tax exclusions for both spouses.

391 (5)(4) Notwithstanding subsection (1), if a power of

392 attorney is otherwise sufficient to grant an agent authority to

393 conduct banking transactions, as provided in s. 709.2208(1),

394 conduct investment transactions as provided in s. 709.2208(2),

395 or otherwise make additions to or withdrawals from an account of

396 the principal, making a deposit to or withdrawal from an

397 insurance policy, retirement account, individual retirement

398 account, benefit plan, bank account, or any other account held

399 jointly or otherwise held in survivorship or payable on death,

400 is not considered to be a change to the survivorship feature or

401 beneficiary designation, and no further specific authority is

402 required for the agent to exercise such authority. A ~~bank or~~

403 ~~other~~ financial institution or broker-dealer does not have a

404 duty to inquire as to the appropriateness of the agent's

405 exercise of that authority and is not liable to the principal or

406 any other person for actions taken in good faith reliance on the

19-00525A-13 2013832__
 407 appropriateness of the agent's actions. This subsection does not
 408 eliminate the agent's fiduciary duties to the principal with
 409 respect to any exercise of the power of attorney.

410 Section 11. Subsection (2) of section 709.2208, Florida
 411 Statutes, is amended to read:

412 709.2208 Banks and other financial institutions.—

413 (2) A power of attorney that specifically includes the
 414 statement that the agent has "authority to conduct investment
 415 transactions as provided in section 709.2208(2), Florida
 416 Statutes" grants general authority to the agent with respect to
 417 securities held by financial institutions or broker-dealers to
 418 take the following actions without additional specific
 419 enumeration in the power of attorney:

420 (a) Buy, sell, and exchange investment instruments.

421 (b) Establish, continue, modify, or terminate an account
 422 with respect to investment instruments.

423 (c) Pledge investment instruments as security to borrow,
 424 pay, renew, or extend the time of payment of a debt of the
 425 principal.

426 (d) Receive certificates and other evidences of ownership
 427 with respect to investment instruments.

428 (e) Exercise voting rights with respect to investment
 429 instruments in person or by proxy, enter into voting trusts, and
 430 consent to limitations on the right to vote.

431 (f) Sell commodity futures contracts and call and put
 432 options on stocks and stock indexes.

433
 434 For purposes of this subsection, the term "investment
 435 instruments" means stocks, bonds, mutual funds, and all other

19-00525A-13 2013832__
 436 types of securities and financial instruments, whether held
 437 directly, indirectly, or in any other manner, including shares
 438 or interests in a private investment fund, including, but not
 439 limited to, a private investment fund organized as a limited
 440 partnership, a limited liability company, a statutory or common
 441 law business trust, a statutory trust, or a real estate
 442 investment trust, joint venture, or any other general or limited
 443 partnership; derivatives or other interests of any nature in
 444 securities such as options, options on futures, and variable
 445 forward contracts; mutual funds; common trust funds; money
 446 market funds; hedge funds; private equity or venture capital
 447 funds; insurance contracts; and other entities or vehicles
 448 investing in securities or interests in securities whether
 449 registered or otherwise, except commodity futures contracts and
 450 call and put options on stocks and stock indexes.

451 Section 12. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic POWERS OF ATTORNEY

Bill Number SB 832
(if applicable)

Name KENNETH PRATT

Amendment Barcode _____
(if applicable)

Job Title VP OF GOVERNMENT OF AFFAIRS

Address 1001 THOMASVILLE RD STE 201
Street

Phone 850-509-8020

TALLAHASSEE FL 32303
City State Zip

E-mail kpratt@floridabankers.com

Speaking: For Against Information

Representing FLORIDA BANKERS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

9
4/2/13

Meeting Date

Topic Power of Attorney Bill Bill Number 832
(if applicable)

Name Martha Edenfield Amendment Barcode _____
(if applicable)

Job Title Attorney

Address PO Box 10095 Phone 850-222-3533

Street

Tallahassee FL 32302

City

State

Zip

E-mail martha@penningtonlaw.com

Speaking: For Against Information

Representing The Real Property, Probate and Trust Law Section of the Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓

COMMITTEES:
 Appropriations Subcommittee on Criminal and Civil Justice, *Vice Chair*
 Appropriations
 Appropriations Subcommittee on General Government
 Ethics and Elections
 Health Policy
 Judiciary
 Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR ARTHENIA L. JOYNER
19th District

March 21, 2013

Senator John Thrasher, Chair
Senate Committee on Rules
402 Senate
404 S. Monroe Street
Tallahassee, FL 32399-1100

RECEIVED
MAR 21 2013
SENATE
RULES COMMITTEE

Dear Chairman Thrasher:

This is to request that Senate Bill 832, Powers of Attorney, be placed on the agenda for the Committee on Rules. Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner
State Senator, District 19

REPLY TO:

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

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 Rules

BILL: CS/SB 1494

INTRODUCER: Judiciary Committee and Senator Thrasher

SUBJECT: Florida False Claims Act

DATE: March 29, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Fav/CS
2.	Munroe	Phelps	RC	Pre-meeting
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1494 conforms the Florida False Claims Act (FFCA)¹ to the Federal False Claims Act.² Specifically, the bill:

- Expands the authority of the Department of Legal Affairs to issue subpoenas to investigate false claims against the state.
- Removes the statement of purpose for the FFCA.
- Revises the definitions under the FFCA to conform to the Federal False Claims Act, revises the violations under the FFCA,
- Revises procedures for the Department of Legal Affairs to intervene in a case under the FFCA.
- Expands the authority of the Attorney General’s Office to prosecute false claims allegedly made by certain governmental officials which are not acted upon by other state officials having authority to act.
- Revises provisions for the burden of proof, to provide that if a defendant in a state or federal proceeding is found guilty, pleads guilty, or pleads *nolo contendere* in a criminal action with

¹ Section 68.081, F.S., states that ss. 68.081 - 68.09, F.S., may be cited as the “Florida False Claims Act.”

² See Federal False Claims Act currently codified at 31 U.S.C. ss. 3729-3733 (Supp IV. 2010).

underlying facts that would support a *qui tam* action, the defendant may not deny any of the matters in the criminal proceeding, as if the department had been a party.

This bill creates section 68.0831, Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 68.081, 68.082, 68.083, 68.084, 68.085, 68.086, 68.087, 68.089, and 68.09.

II. Present Situation:

The Florida False Claims Act (FFCA)³ authorizes civil actions by individuals and the state against persons who file false claims for payment or approval by a state agency. The Florida Legislature enacted the FFCA in 1994 and the FFCA is modeled after the Federal Civil False Claims Act.⁴ The Federal Civil False Claims Act was enacted during the Civil War in response to widespread fraud among defense contractors.⁵ The Federal Civil False Claims Act provides that the United States Attorney General and the Department of Justice may enforce the provisions of the federal act.⁶ The “*qui tam*” provisions of the Federal Civil False Claims Act, however, also authorize private individuals to enforce its provisions on behalf of the United States.⁷ “*Qui tam* action” means “[a]n action brought under a statute that allows a private person to sue for a penalty, part of which the government or some specified public institution will receive.”⁸

In 1986, the Federal False Claims Act was substantially amended and the amendments revitalized the *qui tam* provisions of the federal act by allowing persons to bring an action regardless of the government’s prior knowledge of the allegations.⁹ As a result of the financial success that the Federal False Claims Act brought for federal government, a number of states in addition to Florida have adopted false claims act with *qui tam* provisions.¹⁰

In Florida, the FFCA has often been used to combat health care, nursing home, and Medicaid fraud.¹¹ An action under the FFCA can be brought either by the state itself, or by a private individual on behalf of the state. The Department of Legal Affairs and the Department of Financial Services are responsible for investigating and litigating actions brought under the FFCA. *Qui tam* actions may be brought by private entities on behalf of the State of Florida.¹²

³ Section 68.081, F.S., *supra* note 1

⁴ See House Staff Analysis and Economic Impact Statement for SB 1185 (1994 Reg. Sess.) by the House Committee on Judiciary (Mar. 15, 1994) and *see also*, Federal False Claims Act, *supra* note 2.

⁵ See *Rainwater v. United States*, 356 U.S. 590, 592 (1958) (“The Act was originally passed in 1863 after disclosure of widespread fraud against the Government during the War Between the States.”).

⁶ See 31 U.S.C. s. 3729.

⁷ See 31 U.S.C. s. 3730(a) and (b)(1).

⁸ BLACK’S LAW DICTIONARY (9th ed. 2009).

⁹ House Staff Analysis and Economic Impact Statement for SB 1185 (1994 Reg. Sess.) *supra* note 5.

¹⁰ House Staff Analysis and Economic Impact Statement for SB 1185 (1994 Reg. Sess.) *supra* note 5 and *also see* The False Claims Act Legal Center, Taxpayers Against Fraud Education Fund, State False Claims Acts, <http://www.taf.org/states-false-claims-acts> (last visited March 12, 2013).

¹¹ Florida Department of Legal Affairs.

¹² See s. 68.083(2), F.S. *Qui tam* cases usually arise from an employee of an institution such as a health care provider who discovers that violations of the FFCA are occurring. This is a type of whistleblower action. In a *qui tam* action under the FFCA, the employee will sue on behalf of the state to collect money that was illegally defrauded from the state. A private

When a private person files a *qui tam* action, a copy of the complaint and disclosure of all material evidence must be served on the Attorney General, as head of the Department of Legal Affairs, and the Chief Financial Officer, as head of the Department of Financial Services.¹³ The FFCA does not explicitly provide that a complaint is to be sealed automatically upon filing. However, certain provisions in s. 68.083, F.S., arguably only have meaning if they are construed to mean that a complaint is automatically sealed. Section 68.083(2), F.S., provides that “[p]rior to the court unsealing the complaint under subsection (3), the action may be voluntarily dismissed” Section 68.083(5), F.S., allows the Department of Legal Affairs to request an extension of the time during which the complaint remains sealed under subs. 68.035(2), F.S. Furthermore, the Leon County Clerk of Courts office indicated that the office’s current practice in order to comply with s. 68.083, F.S., is to automatically seal such complaints for 90 days. The complaint is unsealed on the 91st day unless a party successfully moves the court to keep it under seal.

Section 68.083(3), F.S., also provides that when a private individual brings a potential claim to the attention of the Department of Legal Affairs or the Department of Financial Services, these departments have 60 days to decide whether they are going to intervene and take over litigating the FFCA action from the private individual.

Actions that violate the FFCA include:

- Submitting a false claim for payment or approval;¹⁴
- Making or using a false record to get a false or fraudulent claim paid or approved;¹⁵
- Conspiring to make a false claim or to deceive an agency to get a false or fraudulent claim allowed or paid;¹⁶ or
- Making or using a false record to conceal, avoid, or decrease payments owed to the state government.¹⁷

The penalty for violating the FFCA is \$5,500 to \$11,000 per claim, plus three times the amount of damages to the state government.¹⁸ For example, if a person is found guilty of making a false claim where he or she defrauded \$100,000 from the state, that person is liable to pay the state \$300,000 plus the \$5,500 to \$11,000 penalty per claim.

Section 68.089, F.S., provides a statute of limitation where a civil action under the FFCA cannot be brought:

- More than 6 years after the date on which the false claim against the state is committed; or

entity that brings a successful FFCA action on behalf of the state will receive an amount that the court decides is reasonable for collecting the civil penalty and damages. *See* ss. 68.085 and 68.086, F.S. The amount must not be less than 25 percent and not more than 30 percent of the proceeds recovered under a judgment. Section 68.085(3), F.S.

¹³ Section 68.083(3), F.S.

¹⁴ Section 68.082(2)(a), F.S.

¹⁵ Section 68.082(2)(b), F.S.

¹⁶ Section 68.082(2)(c), F.S.

¹⁷ Section 68.082(2)(g), F.S.

¹⁸ Section 68.082(2), F.S.

- More than 3 years after the date when the facts are known or reasonably should have been known by the state; but in no event more than 10 years after the date on which the violation is committed.

III. Effect of Proposed Changes:

The Florida False Claims Act – Section 68.081, F.S.

The current statute includes a statement of purpose that the FFCA is:

to deter persons from knowingly causing or assisting in causing state government to pay claims that are false or fraudulent, and to provide remedies for obtaining treble damages and civil penalties for state government when money is obtained from state government by reason of a false or fraudulent claim.

The bill removes the statement of purpose. The bill clarifies that the Florida False Claims Act includes ss. 68.091 and 68.092, F.S. Section 68.091, F.S., states that the “act shall be liberally construed to effectuate its remedial and deterrent purposes” and also contains a severability clause. Section 68.092, F.S., states that all moneys recovered by the Chief Financial Officer as head of the Department of Financial Services in any civil action for violation of the FFCA based on an action brought under the FFCA must be deposited in the Administrative Trust Fund of the Department of Financial Services.

Definitions – Section 68.082, F.S.

The current statute defines “agency” as an official or other subset of the executive branch of the state government.

The bill removes this definition, and consistently changes the term “agency” throughout the balance of the FFCA to “state.” The term “state” is defined in the bill so as to include state agencies, authorities, and instrumentalities. The net effect of these changes is to expand the applicability of the FFCA to state subdivisions and instrumentalities where prior law limited it to executive branch agencies.¹⁹

The bill also adds definitions for “material” and “obligation”²⁰ which conforms with definitions found in the Federal False Claims Act. “Material” includes the ability to influence the payment of money, and “obligation” now includes an established duty.

¹⁹ Cf. Fla. AGO 2011-10, which excludes municipalities from the act because of the definitions of “agency,” and “instrumentality.” 2011 WL 2429107.

²⁰ Under the Federal False Claims Act, “material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property. 31 U.S.C. 3729(b)(3). Under the Federal False Claims Act, “obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment. 31 U.S.C. 3729 (b)(4).

Violations under Section 68.082(2), F.S.

The bill substantially expands the jurisdiction of the Department of Legal Affairs to investigate and prosecute violations of the FFCA. Currently, the jurisdiction of the Department of Legal Affairs under the FFCA is limited to pursuing perpetrators of fraudulent claims against executive branch entities. The bill authorizes the Attorney General's Office to investigate or prosecute perpetrators of false claims against any instrumentality of the state, which would include the Legislative and Judicial Branches.

Currently, an agency or the department may take action against perpetrators of false claims. Because the bill consistently removes "agency" and replaces it with "department," the bill makes the Department of Legal Affairs the sole entity in the state to pursue the FFCA, except for those initiated by or intervened in by the Department of Financial Services pursuant to s. 68.083, F.S.

Under the bill, a person is liable under the FFCA who:

- Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;
- Conspires to commit a violation the violations statute;
- Has possession, custody, or control of property or money used or to be used by the state and knowingly delivers or causes to be delivered less than all or that money or property;
- Is authorized to make or deliver a document certifying receipt of property used or to be used by the state and, intending to defraud the state, makes or delivers the receipt without knowing that the information on the receipt is true;
- Knowingly buys or received, as a pledge of an obligation or a debt, public property from an officer or employee of the state who may not sell or pledge the property; or
- Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state.

The conduct prohibited by the FFCA as revised by the bill is only subtly different than the conduct prohibited under existing law. The civil penalties for violating the FFCA of \$5,500 to \$11,000 per claim, plus three times the amount of damages to the state government are unchanged.

Civil Actions for False Claims – Section 68.083, F.S.

Section 68.083(7), F.S., provides that when a private individual brings a potential claim to the attention of the Department of Legal Affairs or the Department of Financial Services, as appropriate, have 60 days to decide whether to intervene and take over litigating the FFCA action from the private individual. The bill removes the reference to "on behalf of the state," which appears to preclude other government entities other than the Department of Legal Affairs or the Department of Financial Services from intervening or bringing a related action.

Subpoenas – Section 68.0831, F.S.

Under current law, the Department of Legal Affairs may investigate claims but is not authorized to issue subpoenas to facilitate the investigation of claims. The department reports that the lack of subpoena authority can make it difficult for the department to determine if it is appropriate to intervene in a FFCA case.

The bill creates s. 68.0831, F.S., to grant the Department of Legal Affairs discovery capabilities prior to the institution of a civil proceeding, if it has reason to believe that any person has testimony or evidence relevant to an investigation. The bill provides that the department may issue subpoenas requiring the recipient to:

- Produce documents;
- Answer interrogatories under oath; and
- Give sworn testimony.

The bill provides:

- A subpoena will be served as other process;
- A subpoena must detail the materials requested and the nature of the conduct to which the materials relate;
- The recipient of a subpoena may petition the Circuit Court of Leon County for relief from the subpoena;
- The recipient of a subpoena has 30 days to respond at the time and place specified, or risk being subject to contempt;
- Transcribed testimony may be reviewed by the deponent;
- The department may stipulate to protective orders; and
- The department may request that a person who refuses to comply on Fifth Amendment grounds may be compelled to comply by the court.

The bill provides that the discovery provisions do not impair the ability of the department to:

- Institute a civil proceeding; or
- Invoke the power of the court to compel production of evidence before a grand jury.

The bill provides for a civil penalty up to \$100,000 for a natural person and \$1 million for any other entity, plus reasonable attorney fees and costs if the person or entity knowingly creates or destroys evidence while a subpoena is pending.

Rights of Parties in Civil Actions – Section 68.084, F.S.

Currently, the department may dismiss a cause voluntarily over the objections of the person who initiated the action. The bill authorizes the department to dismiss an action “at any point” over the objections of said person.

Currently, the application of one civil remedy under the Act does not preclude another. The bill authorizes the state to elect to pursue a false claim through an administrative remedy to determine a civil monetary penalty, and if the state does so, the person bringing the action has the same rights as the person will have in an action brought through the courts.

The bill also specifies when a finding or conclusion is final once the time for appeal has expired.

Awards to Plaintiffs Bringing Actions – Section 68.085, F.S.

Currently, the private party bringing the action is entitled to recover a portion of the proceeds awarded by the court in the event that the department prevails in a false claims action.

The bill adds that the person bringing the claim will also be entitled to expenses incurred in pursuit of the claim, including reasonable attorney fees and costs. Moreover, those fees and costs will be assessed against the defendant and are payable only from the proceeds of the action.

Expenses and Attorney Fees – Section 68.086, F.S.

Currently, the provisions for the fees and costs of the person bringing the action and the department are contained in the same section of the FFCA. Because the provisions for the payment of private parties has been moved to s. 68.085, F.S., that provision was removed from s. 68.087, F.S., leaving provision for payment of attorney fees to the department intact.

Exemptions to Civil Actions – Section 68.087, F.S.

Government Officials

Section 68.087, F.S., closely resembles the federal false claims statute.²¹ Currently, the statute provides that no court shall have jurisdiction over an action under the statute against any member of the Legislature, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the state government.

The bill departs from the federal model, which continues to provide that a court has no jurisdiction over a false claims action for acts known to “the [g]overnment.” The bill changes this limitation to information known to the Department of Legal Affairs or Department of Financial Services. This distinction has the effect of expanding potential false claims actions to now include previously excluded government officials where information is not previously known to the Department of Legal Affairs or the Department of Financial Services.

Publicly Disclosed Evidence

Currently if a false claim is brought based upon evidence which was disclosed in a pending investigation, the court does not have jurisdiction to entertain the action. Disclosure of the

²¹ 31 U.S.C. 3730(e)(2)(A) provides “[n]o court shall have jurisdiction over an action brought under [the Federal False Claims Act] against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.”

evidence through the media also causes the court to lose jurisdiction, unless the person bringing the action was the original source of the information.²²

The bill provides that the court may dismiss an action brought upon publicly disclosed facts, and gives the department the opportunity to object to such dismissal of the action.

Local Governments

Currently, the statute²³ provides that the court has no jurisdiction over a case brought against local governments, which is defined as a county or municipality.

The bill removes the reference to local governments and continues to provide that the court cannot have jurisdiction over an action brought under the act against a county or municipality.

Limitations and Interventions by the Department – Section 68.089, F.S.

Limitation of Actions

Currently, no action may be brought for false claims more than 6 years after the violation, or more than 3 years after the material facts were known to the public official charged with responsibility of the matter, but in no event more than 10 years after the date on which the violation was committed.

Under the bill expands the limitation on actions so that an action may not be brought more than three years after the date when the material facts were known or reasonably should have been known by Department of Legal Affairs or the Department of Financial Services, as appropriate, rather than the state official charged with responsibility of the matter. The distinction of this effect will allow the department to sit in the shoes of the government official who has responsibility for the matter. Therefore, no action may be brought more than 3 years after material facts were known to the department.

Intervention by the Department

The bill adds a new provision which allows the Department of Legal Affairs or the Department of Financial Services, as appropriate, to amend the pleadings if it intervenes in an existing action. It may also file a completely new complaint. For statute of limitations purposes, the bill provides that such changes relate back to the original date the action was brought. The bill authorizes the department to intervene and make such changes in pending actions.

²² The current provision which deprives the court of jurisdiction subjects a suit in these circumstances to dismissal pursuant to Fla. R. Civ. Pro. 1.140 on the basis of a lack of subject matter jurisdiction. Further, a court order entered without jurisdiction is void. *Blewitt v. Nicholson*, 2 Fla. 200 (1848).

²³ Section 68.088(6), F.S.

Burden of Proof – Section 68.09, F.S.

Currently the statute provides that the State of Florida must prove the essential elements of a false claim action by a preponderance of the evidence. The bill changes the “State of Florida” to the “department.”

The bill adds that if a defendant in a state or federal proceeding is found guilty, pleads guilty, or pleads *nolo contendere* in a criminal action with underlying facts that would support a *qui tam* action, the defendant is estopped (may not deny) any of the matters in the criminal proceeding, as if the department had been a party.

Effective date

The bill takes effect July 1, 2013.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on March 18, 2013:

The committee substitute corrects a scrivener’s error, replacing the word “department” with “state government.”

- B. **Amendments:**

None.

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



298330

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete lines 188 - 333
and insert:

Section 4. Effective on the same date that SB 1496 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law, section 68.0831, Florida Statutes, is created to read:

68.0831 Subpoena.—

(1) As used in this section, the term "department" means the Department of Legal Affairs.

(2) Whenever the department has reason to believe that any



298330

14 person may be in possession, custody, or control of any
15 documentary material or may have any information, which
16 documentary material or information is relevant to a civil
17 investigation authorized by s. 68.083, the department may,
18 before the institution of a civil proceeding thereon, issue in
19 writing and cause to be served upon the person a subpoena
20 requiring the person to:

21 (a) Produce such documentary material for inspection and
22 copying or reproduction;

23 (b) Answer, under oath and in writing, written
24 interrogatories;

25 (c) Give sworn oral testimony concerning the documentary
26 material or information; or

27 (d) Furnish any combination of such material, answers, or
28 testimony.

29 (3) The subpoena shall:

30 (a) Be served upon the person in the manner required for
31 service of process in this state or by certified mail showing
32 receipt by the addressee or by the authorized agent of the
33 addressee.

34 (b) State the nature of the conduct that constitutes the
35 violation of this act and that is alleged to have occurred or to
36 be imminent.

37 (c) Describe the class or classes of documentary material
38 to be produced thereunder with such definiteness and certainty
39 as to permit such materials to be reasonably identified.

40 (d) Prescribe a date and time at which the person must
41 appear to testify, under oath or affirmation, or by which the
42 person must answer written interrogatories or produce the



298330

43 documentary material for inspection or copying; however, such
44 date shall not be earlier than 30 days after the date of service
45 of the subpoena.

46 (e) Specify a place for the taking of testimony or for the
47 submission of answers to interrogatories and identify the person
48 who is to take custody of any documentary material. Inspection
49 and copying of documentary material shall be carried out at the
50 place where the documentary material is located or at such other
51 place as may be thereafter agreed to by the person and such
52 designated custodian. Upon written agreement between the person
53 and the designated custodian, copies may be substituted for
54 original documents.

55 (4) Such subpoena may not require the production of any
56 documentary material, the submission of any answers to written
57 interrogatories, or the giving of any oral testimony if such
58 material, answers, or testimony would be protected from
59 disclosure under:

60 (a) The standards applicable to subpoenas or subpoenas
61 duces tecum issued by a court of this state in aid of a grand
62 jury investigation; or

63 (b) The standards applicable to a discovery request under
64 the Florida Rules of Civil Procedure, to the extent that the
65 application of such standards to any such subpoena is
66 appropriate and consistent with the provisions and purposes of
67 this act.

68 (5) This section does not limit the power of the department
69 to require the appearance of witnesses or production of
70 documents or other tangible evidence located outside the state.

71 (6) Within 30 days after the service of a subpoena upon any



298330

72 person or at any time before the return date specified therein,
73 whichever period is longer, the person served may file, and
74 serve on the department, a petition for an order of the court
75 modifying or setting aside the subpoena. Any such petition shall
76 be filed in the circuit court of the Second Judicial Circuit in
77 and for Leon County. The time allowed for compliance in whole or
78 in part with the subpoena as deemed proper and ordered by the
79 court shall not run while the petition is pending before the
80 court. The petition shall specify each ground upon which the
81 petitioner relies in seeking relief and may be based upon the
82 failure of the subpoena to comply with this section or upon any
83 constitutional or other legal right or privilege of such person.

84 (7) In case of the failure of any person to comply in whole
85 or in part with a subpoena and when such person has not filed a
86 petition under subsection (6), the circuit court of the Second
87 Judicial Circuit in and for Leon County, upon application of the
88 department, may issue an order requiring compliance. The failure
89 to obey the order of the court shall be punishable as a contempt
90 of court.

91 (8) The examination of all witnesses under this section
92 shall be conducted by the department before an officer
93 authorized to administer oaths in this state. The testimony
94 shall be taken stenographically or by a sound-recording device.
95 Any person compelled to appear under a subpoena for oral
96 testimony pursuant to this section may be accompanied,
97 represented, and advised by counsel. Counsel may advise such
98 person, in confidence, either upon the request of such person or
99 upon counsel's own initiative, with respect to any question
100 asked of such person. Such person or counsel may object on the



298330

101 record to any question, in whole or in part, and shall briefly
102 state for the record the reason for any such objection. If such
103 person refuses to answer any question, the person conducting the
104 examination may petition the circuit court as provided by
105 subsection (11).

106 (9) When the testimony is fully transcribed, the person
107 conducting the deposition shall afford the witness, and counsel,
108 if any, a reasonable opportunity to examine the transcript, and
109 the transcript shall be read to or by the witness, unless such
110 examination and reading is waived by the witness. Any changes in
111 form or substance that the witness desires to make shall be
112 entered and identified upon the transcript by the officer or the
113 department, with a statement of the reasons given by the witness
114 for making such changes. The transcript shall then be signed by
115 the witness unless the witness waives the signing in writing, is
116 ill, cannot be found, or refuses to sign. If the transcript is
117 not signed by the witness within 30 days after his or her being
118 afforded a reasonable opportunity to examine it, the person
119 conducting the examination shall sign it and state on the record
120 the fact of the waiver, illness, absence, or refusal to sign,
121 together with the reason, if any, given therefor. Any person
122 required to testify or to submit documentary evidence is
123 entitled, on payment of reasonable costs, to procure a copy of
124 any document produced by such person and of his or her own
125 testimony as stenographically reported or, in the case of a
126 deposition, as reduced to writing by or under the direction of
127 the person taking the deposition.

128 (10) The department shall have the authority to stipulate
129 to protective orders with respect to documents and information



298330

130 submitted in response to a subpoena under this section.

131 (11) The department may request that any natural person who
132 refuses to comply with this section on the ground that the
133 testimony or documents may incriminate him or her be ordered by
134 the circuit court to provide the testimony or the documents.
135 Except in a prosecution for perjury, a natural person who
136 complies with a court order to provide testimony or documents
137 after asserting a privilege against self-incrimination to which
138 he or she is entitled by law may not be subject to a criminal
139 proceeding with respect to the transaction to which he or she is
140 required to testify or produce documents. Any natural person who
141 fails to comply with such a court order to testify or produce
142 documents may be adjudged in contempt and imprisoned until the
143 time the person purges himself or herself of the contempt.

144 (12) While in the possession of the custodian, documentary
145 material, answers to interrogatories, and transcripts of oral
146 testimony shall be available, under such reasonable terms and
147 conditions as the department shall prescribe, for examination by
148 the person who produced such materials or answers or that
149 person's duly authorized representative.

150 (13) This section does not impair the authority of the
151 department to:

152 (a) Institute a civil proceeding under s. 68.083;

153 (b) Invoke the power of a court to compel the production of
154 evidence before a grand jury; or

155 (c) Maintain the confidential and exempt status of the
156 complaint and any other information as provided in s. 68.083(8).

157 (14) (a) A person who knows or has reason to believe that a
158



298330

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

160 And the title is amended as follows:

161 Delete lines 10 - 35

162 and insert:

163 files an action under the act; creating s. 68.0831,
164 F.S.; defining the term "department"; authorizing the
165 Department of Legal Affairs to issue subpoenas for
166 specified purposes before the institution of civil
167 proceedings; providing requirements for the content
168 and service of subpoenas; providing that such
169 subpoenas may not require specified protected
170 documents or testimony; specifying that the
171 department's power to require the appearance of
172 witnesses or production of documents or other tangible
173 evidence located outside the state is unaffected;
174 providing for petitions to modify or set aside
175 subpoenas; providing for orders to comply with
176 subpoenas; providing for the examination of witnesses;
177 providing for review of transcripts of testimony;
178 authorizing the department to stipulate to protective
179 orders of submitted documents and information;
180 providing for natural persons who decline to testify
181 or produce documents after asserting a privilege
182 against self-incrimination to be ordered to testify or
183 produce documents; providing for contempt to comply
184 with such orders; providing for examination of
185 testimony, answers, or materials by the person who
186 produced such materials or answers; providing
187 applicability; prohibiting a person knowing or having



298330

188
189

reason to believe that a subpoena is pending from
tampering with evidence; providing civil penalties;



784344

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Rules (Lee) recommended the following:

Senate Amendment

Delete line 597

and insert:

Section 11. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2013.

By the Committee on Judiciary; and Senator Thrasher

590-02624-13

20131494c1

1 A bill to be entitled
 2 An act relating to the Florida False Claims Act;
 3 amending s. 68.081, F.S.; revising a cross-reference;
 4 deleting a statement of purpose; amending s. 68.082,
 5 F.S.; deleting, revising, and providing definitions;
 6 revising conditions under which a person is liable for
 7 a specified civil penalty; amending s. 68.083, F.S.;
 8 revising terminology; revising language concerning who
 9 may intervene or bring a related action after a person
 10 files an action under the act; creating s. 68.0831,
 11 F.S.; authorizing the Department of Legal Affairs to
 12 issue subpoenas for specified purposes before the
 13 institution of civil proceedings; providing
 14 requirements for the content and service of subpoenas;
 15 providing that such subpoenas may not require
 16 specified protected documents or testimony; specifying
 17 that the department's power to require the appearance
 18 of witnesses or production of documents or other
 19 tangible evidence located outside the state is
 20 unaffected; providing for petitions to modify or set
 21 aside subpoenas; providing for orders to comply with
 22 subpoenas; providing for the examination of witnesses;
 23 providing for review of transcripts of testimony;
 24 authorizing the department to stipulate to protective
 25 orders of submitted documents and information;
 26 providing for natural persons who decline to testify
 27 or produce documents after asserting a privilege
 28 against self-incrimination to be ordered to testify or
 29 produce documents; providing for contempt to comply

Page 1 of 21

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

590-02624-13

20131494c1

30 with such orders; providing for examination of
 31 testimony, answers, or materials by the person who
 32 produced such materials or answers; providing for
 33 construction; prohibiting specified actions by a
 34 person knowing or having reason to believe that a
 35 subpoena is pending; providing civil penalties;
 36 amending s. 68.084, F.S.; clarifying that the
 37 department may dismiss actions at any point; revising
 38 language concerning the costs to the department for
 39 continuing to receive pleadings and transcripts of an
 40 action after it has elected to withdraw; providing
 41 that the state may elect to pursue available
 42 alternative remedies, including administrative
 43 proceedings; specifying what constitutes a final
 44 finding or conclusion in an alternative proceeding
 45 that is binding on all parties to an action under the
 46 act; amending s. 68.085, F.S.; providing for
 47 successful plaintiffs to receive, in addition to a
 48 portion of the amount recovered, awards of expenses
 49 and attorney fees and costs; amending s. 68.086, F.S.;
 50 deleting references to awards of attorney fees to
 51 successful plaintiffs; revising provisions relating to
 52 awards of attorney fees to the department; amending s.
 53 68.087, F.S.; revising provisions relating to
 54 dismissal of an action if substantially the same
 55 allegations or transactions as alleged in the action
 56 were publicly disclosed; amending s. 68.089, F.S.;
 57 providing for the treatment for statutes of
 58 limitations purposes of pleadings filed in

Page 2 of 21

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

590-02624-13

20131494c1

59 interventions by the department; amending s. 68.09,
 60 F.S.; providing for estoppel as to certain matters
 61 following a final judgment or decree rendered in favor
 62 of the state or the Federal Government in certain
 63 criminal proceedings; providing an effective date.

64
 65 Be It Enacted by the Legislature of the State of Florida:

66
 67 Section 1. Section 68.081, Florida Statutes, is amended to
 68 read:

69 68.081 Florida False Claims Act; short title; ~~purpose.~~-

70 ~~(1)~~ Sections 68.081-68.092 ~~68.081-68.09~~ may be cited as the
 71 "Florida False Claims Act."

72 ~~(2) The purpose of the Florida False Claims Act is to deter~~
 73 ~~persons from knowingly causing or assisting in causing state~~
 74 ~~government to pay claims that are false or fraudulent, and to~~
 75 ~~provide remedies for obtaining treble damages and civil~~
 76 ~~penalties for state government when money is obtained from state~~
 77 ~~government by reason of a false or fraudulent claim.~~

78 Section 2. Section 68.082, Florida Statutes, is amended to
 79 read:

80 68.082 False claims against the state; definitions;
 81 liability.-

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

83 ~~(a) "Agency" means any official, officer, commission,~~
 84 ~~board, authority, council, committee, or department of the~~
 85 ~~executive branch of state government.~~

86 ~~(a)(b)~~ "Claim" means includes any ~~written or electronically~~
 87 ~~submitted~~ request or demand, whether under a contract or

590-02624-13

20131494c1

88 otherwise, for money ~~or~~ property, regardless of whether the
 89 state has title to the money or property, that: ~~or services,~~
 90 which

91 1. Is presented ~~made~~ to any employee, officer, or agent of
 92 the state; ~~an agency,~~ or

93 2. Is made to a ~~any~~ contractor, grantee, or other recipient
 94 if the ~~state agency~~ provides or has provided any portion of the
 95 money or property requested or demanded, or if the ~~state agency~~
 96 will reimburse the contractor, grantee, or other recipient for
 97 any portion of the money or property that is requested or
 98 demanded.

99 (c) "Knowing" or "knowingly" means, with respect to
 100 information, that a person:

101 1. Has actual knowledge of the information;

102 2. Acts in deliberate ignorance of the truth or falsity of
 103 the information; or

104 3. Acts in reckless disregard of the truth or falsity of
 105 the information.

106
 107 No proof of specific intent to defraud is required. Innocent
 108 mistake shall be a defense to an action under this act.

109 (d) "Material" means having a natural tendency to
 110 influence, or be capable of influencing, the payment or receipt
 111 of money or property.

112 (e) "Obligation" means an established duty, fixed or
 113 otherwise, arising from an express or implied contractual,
 114 grantor-grantee, or licensor-licensee relationship, from a fee-
 115 based or similar relationship, from statute or regulation, or
 116 from the retention of any overpayment.

590-02624-13

20131494c1

117 ~~(f)~~ (d) "State government" means the government of the state
 118 or any department, division, bureau, commission, regional
 119 planning agency, board, district, authority, agency, or other
 120 instrumentality of the state.

121 ~~(b)~~ (e) "Department" means the Department of Legal Affairs,
 122 except as specifically provided in ss. 68.083 and 68.084.

123 (2) Any person who:

124 (a) Knowingly presents or causes to be presented ~~to an~~
 125 ~~officer or employee of an agency~~ a false or fraudulent claim for
 126 payment or approval;

127 (b) Knowingly makes, uses, or causes to be made or used a
 128 false record or statement material to ~~get~~ a false or fraudulent
 129 claim ~~paid or approved by an agency~~;

130 (c) Conspires to commit a violation of this subsection
 131 ~~submit a false or fraudulent claim to an agency or to deceive an~~
 132 ~~agency for the purpose of getting a false or fraudulent claim~~
 133 ~~allowed or paid~~;

134 (d) Has possession, custody, or control of property or
 135 money used or to be used by the state an agency and, ~~intending~~
 136 ~~to deceive the agency or~~ knowingly ~~conceal the property,~~
 137 delivers or causes to be delivered less property than all of
 138 that money or property ~~the amount for which the person receives~~
 139 ~~a certificate or receipt~~;

140 (e) Is authorized to make or deliver a document certifying
 141 receipt of property used or to be used by the state an agency
 142 and, intending to defraud ~~deceive~~ the state agency, makes or
 143 delivers the receipt without knowing that the information on the
 144 receipt is true;

145 (f) Knowingly buys or receives, as a pledge of an

590-02624-13

20131494c1

146 obligation or a debt, public property from an officer or
 147 employee of the state an agency who may not sell or pledge the
 148 property ~~lawfully~~; or

149 (g) Knowingly makes, uses, or causes to be made or used a
 150 false record or statement material to an obligation to pay or
 151 transmit money or property to the state, or knowingly conceals
 152 or knowingly and improperly avoids or decreases to conceal,
 153 ~~avoid, or decrease~~ an obligation to pay or transmit money or
 154 property to the state an agency;

155
 156 is liable to the state for a civil penalty of not less than
 157 \$5,500 and not more than \$11,000 and for treble the amount of
 158 damages the state agency sustains because of the act ~~or omission~~
 159 of that person.

160 (3) The court may reduce the treble damages authorized
 161 under subsection (2) if the court finds one or more of the
 162 following specific extenuating circumstances:

163 (a) The person committing the violation furnished the
 164 department officials of the agency responsible for investigating
 165 ~~false claims violations~~ with all information known to the person
 166 about the violation within 30 days after the date on which the
 167 person first obtained the information;

168 (b) The person fully cooperated with any official
 169 investigation of the violation; or

170 (c) At the time the person furnished the department agency
 171 with the information about the violation, no criminal
 172 prosecution, civil action, or administrative action had
 173 commenced under this section with respect to the violation, and
 174 the person did not have actual knowledge of the existence of an

590-02624-13

20131494c1

175 investigation into the violation;

176

177 in which case the court shall award no less than 2 times the
178 amount of damages sustained by the ~~state agency~~ because of the
179 act of the person. The court shall set forth in a written order
180 its findings and basis for reducing the treble damages award.

181 Section 3. Subsection (7) of section 68.083, Florida
182 Statutes, is amended to read:

183 68.083 Civil actions for false claims.—

184 (7) When a person files an action under this section, no
185 person other than the department ~~on behalf of the state~~ may
186 intervene or bring a related ~~an~~ action ~~under this act~~ based on
187 the facts underlying the pending action.

188 Section 4. Section 68.0831, Florida Statutes, is created to
189 read:

190 68.0831 Subpoena.—

191 (1) Whenever the department has reason to believe that any
192 person may be in possession, custody, or control of any
193 documentary material or may have any information, which
194 documentary material or information is relevant to a civil
195 investigation authorized by s. 68.083, the department may,
196 before the institution of a civil proceeding thereon, issue in
197 writing and cause to be served upon the person a subpoena
198 requiring the person to:

199 (a) Produce such documentary material for inspection and
200 copying or reproduction;

201 (b) Answer, under oath and in writing, written
202 interrogatories;

203 (c) Give sworn oral testimony concerning the documentary

590-02624-13

20131494c1

204 material or information; or

205 (d) Furnish any combination of such material, answers, or
206 testimony.

207 (2) The subpoena shall:

208 (a) Be served upon the person in the manner required for
209 service of process in this state or by certified mail showing
210 receipt by the addressee or by the authorized agent of the
211 addressee.

212 (b) State the nature of the conduct that constitutes the
213 violation of this act and that is alleged to have occurred or to
214 be imminent.

215 (c) Describe the class or classes of documentary material
216 to be produced thereunder with such definiteness and certainty
217 as to permit such materials to be reasonably identified.

218 (d) Prescribe a date and time at which the person must
219 appear to testify, under oath or affirmation, or by which the
220 person must answer written interrogatories or produce the
221 documentary material for inspection or copying; however, such
222 date shall not be earlier than 30 days after the date of service
223 of the subpoena.

224 (e) Specify a place for the taking of testimony or for the
225 submission of answers to interrogatories and identify the person
226 who is to take custody of any documentary material. Inspection
227 and copying of documentary material shall be carried out at the
228 place where the documentary material is located or at such other
229 place as may be thereafter agreed to by the person and such
230 designated custodian. Upon written agreement between the person
231 and the designated custodian, copies may be substituted for
232 original documents.

590-02624-13

20131494c1

233 (3) Such subpoena may not require the production of any
234 documentary material, the submission of any answers to written
235 interrogatories, or the giving of any oral testimony if such
236 material, answers, or testimony would be protected from
237 disclosure under:

238 (a) The standards applicable to subpoenas or subpoenas
239 duces tecum issued by a court of this state in aid of a grand
240 jury investigation; or

241 (b) The standards applicable to a discovery request under
242 the Florida Rules of Civil Procedure, to the extent that the
243 application of such standards to any such subpoena is
244 appropriate and consistent with the provisions and purposes of
245 this act.

246 (4) This section does not limit the power of the department
247 to require the appearance of witnesses or production of
248 documents or other tangible evidence located outside the state.

249 (5) Within 30 days after the service of a subpoena upon any
250 person or at any time before the return date specified therein,
251 whichever period is longer, the person served may file, and
252 serve on the department, a petition for an order of the court
253 modifying or setting aside the subpoena. Any such petition shall
254 be filed in the circuit court of the Second Judicial Circuit in
255 and for Leon County. The time allowed for compliance in whole or
256 in part with the subpoena as deemed proper and ordered by the
257 court shall not run while the petition is pending before the
258 court. The petition shall specify each ground upon which the
259 petitioner relies in seeking relief and may be based upon the
260 failure of the subpoena to comply with this section or upon any
261 constitutional or other legal right or privilege of such person.

Page 9 of 21

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

590-02624-13

20131494c1

262 (6) In case of the failure of any person to comply in whole
263 or in part with a subpoena and when such person has not filed a
264 petition under subsection (5), the circuit court of the Second
265 Judicial Circuit in and for Leon County, upon application of the
266 department, may issue an order requiring compliance. The failure
267 to obey the order of the court shall be punishable as a contempt
268 of court.

269 (7) The examination of all witnesses under this section
270 shall be conducted by the department before an officer
271 authorized to administer oaths in this state. The testimony
272 shall be taken stenographically or by a sound-recording device.
273 Any person compelled to appear under a subpoena for oral
274 testimony pursuant to this section may be accompanied,
275 represented, and advised by counsel. Counsel may advise such
276 person, in confidence, either upon the request of such person or
277 upon counsel's own initiative, with respect to any question
278 asked of such person. Such person or counsel may object on the
279 record to any question, in whole or in part, and shall briefly
280 state for the record the reason for any such objection. If such
281 person refuses to answer any question, the person conducting the
282 examination may petition the circuit court as provided by
283 subsection (10).

284 (8) When the testimony is fully transcribed, the person
285 conducting the deposition shall afford the witness, and counsel,
286 if any, a reasonable opportunity to examine the transcript, and
287 the transcript shall be read to or by the witness, unless such
288 examination and reading is waived by the witness. Any changes in
289 form or substance that the witness desires to make shall be
290 entered and identified upon the transcript by the officer or the

Page 10 of 21

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

590-02624-13

20131494c1

291 department, with a statement of the reasons given by the witness
 292 for making such changes. The transcript shall then be signed by
 293 the witness unless the witness waives the signing in writing, is
 294 ill, cannot be found, or refuses to sign. If the transcript is
 295 not signed by the witness within 30 days after his or her being
 296 afforded a reasonable opportunity to examine it, the person
 297 conducting the examination shall sign it and state on the record
 298 the fact of the waiver, illness, absence, or refusal to sign,
 299 together with the reason, if any, given therefor. Any person
 300 required to testify or to submit documentary evidence is
 301 entitled, on payment of reasonable costs, to procure a copy of
 302 any document produced by such person and of his or her own
 303 testimony as stenographically reported or, in the case of a
 304 deposition, as reduced to writing by or under the direction of
 305 the person taking the deposition.

306 (9) The department shall have the authority to stipulate to
 307 protective orders with respect to documents and information
 308 submitted in response to a subpoena under this section.

309 (10) The department may request that any natural person who
 310 refuses to comply with this section on the ground that the
 311 testimony or documents may incriminate him or her be ordered by
 312 the circuit court to provide the testimony or the documents.
 313 Except in a prosecution for perjury, a natural person who
 314 complies with a court order to provide testimony or documents
 315 after asserting a privilege against self-incrimination to which
 316 he or she is entitled by law may not be subject to a criminal
 317 proceeding with respect to the transaction to which he or she is
 318 required to testify or produce documents. Any natural person who
 319 fails to comply with such a court order to testify or produce

590-02624-13

20131494c1

320 documents may be adjudged in contempt and imprisoned until the
 321 time the person purges himself or herself of the contempt.

322 (11) While in the possession of the custodian, documentary
 323 material, answers to interrogatories, and transcripts of oral
 324 testimony shall be available, under such reasonable terms and
 325 conditions as the department shall prescribe, for examination by
 326 the person who produced such materials or answers or that
 327 person's duly authorized representative.

328 (12) This section does not impair the authority of the
 329 department to:

330 (a) Institute a civil proceeding under s. 68.083; or

331 (b) Invoke the power of a court to compel the production of
 332 evidence before a grand jury.

333 (13) (a) A person who knows or has reason to believe that a
 334 subpoena pursuant to this section is pending shall not:

335 1. Alter, destroy, conceal, or remove any record, document,
 336 or thing with the purpose of impairing its verity or
 337 availability in such proceeding or investigation; or

338 2. Make, present, or use any record, document, or thing
 339 knowing it to be false.

340 (b) Any natural person who violates this subsection is
 341 subject to a civil penalty of not more than \$100,000, reasonable
 342 attorney fees, and costs. Any other person who violates this
 343 subsection is subject to a civil penalty of not more than \$1
 344 million, reasonable attorney fees, and costs.

345 Section 5. Subsections (2) through (5) of section 68.084,
 346 Florida Statutes, are amended to read:

347 68.084 Rights of the parties in civil actions.—

348 (2) (a) The department may at any point voluntarily dismiss

590-02624-13 20131494c1

349 the action notwithstanding the objections of the person
350 initiating the action.

351 (b) Subject to s. 17.04, nothing in this act shall be
352 construed to limit the authority of the department or the qui
353 tam plaintiff to compromise a claim brought in a complaint filed
354 under this act if the court determines, after a hearing, that
355 the proposed settlement is fair, adequate, and reasonable under
356 all the circumstances.

357 (c) Upon a showing by the department that unrestricted
358 participation during the course of the litigation by the person
359 initiating the action would interfere with or unduly delay the
360 department's prosecution of the case, or would be repetitious,
361 irrelevant, or for purposes of harassment, the court may, in its
362 discretion, impose limitations on the person's participation,
363 including, but not limited to:

- 364 1. Limiting the number of witnesses the person may call;
- 365 2. Limiting the length of the testimony of the person's
366 witnesses;
- 367 3. Limiting the person's cross-examination of witnesses; or
- 368 4. Otherwise limiting the participation by the person in
369 the litigation.

370 (d) Upon a showing by the defendant that unrestricted
371 participation during the course of the litigation by the person
372 initiating the action would be for purposes of harassment or
373 would cause the defendant undue burden or unnecessary expense,
374 the court may limit the participation by the person in the
375 litigation.

376 (3) If the department elects not to proceed with the
377 action, the person who initiated the action has the right to

590-02624-13 20131494c1

378 conduct the action. If the Attorney General, as head of the
379 department, or the Chief Financial Officer, as head of the
380 Department of Financial Services, so requests, it shall be
381 served, ~~at the requesting department's expense~~, with copies of
382 all pleadings and motions filed in the action along with and
383 copies of all deposition transcripts at the requesting
384 department's expense. When a person proceeds with the action,
385 the court, without limiting the rights of the person initiating
386 the action, may nevertheless permit the department to intervene
387 and take over the action on behalf of the state at a later date
388 upon showing of good cause.

389 (4) Regardless of whether or not the department proceeds
390 with the action, upon a showing by the department that certain
391 actions of discovery by the person initiating the action would
392 interfere with an investigation by the state government or the
393 prosecution of a criminal or civil matter arising out of the
394 same facts, the court may stay such discovery for a period of
395 not more than 60 days. Such a showing shall be conducted in
396 camera. The court may extend the 60-day period upon a further
397 showing in camera by the department that the criminal or civil
398 investigation or proceeding has been pursued with reasonable
399 diligence and any proposed discovery in the civil action will
400 interfere with an ongoing criminal or civil investigation or
401 proceeding.

402 (5) Notwithstanding paragraph (2)(b), the state may elect
403 to pursue its claim through any available alternate remedy,
404 including any administrative proceeding to determine a civil
405 money penalty. If any such alternate remedy is pursued in
406 another proceeding, the person initiating the action shall have

590-02624-13

20131494c1

407 ~~the same rights in such proceeding as the person would have had~~
 408 ~~if the action had continued under this section. The application~~
 409 ~~of one civil remedy under this act does not preclude the~~
 410 ~~application of any other remedy, civil or criminal, under this~~
 411 ~~act or any other provision of law. Civil remedies under this act~~
 412 ~~are supplemental, not mutually exclusive.~~ Any finding of fact or
 413 conclusion of law made in such other proceeding that has become
 414 final shall be conclusive on all parties to an action under this
 415 section. For purposes of ~~As used in~~ this subsection, a finding
 416 or conclusion is final if it has been finally determined on
 417 appeal to the appropriate court, if all time for filing such an
 418 appeal with respect to the finding or conclusion has expired, or
 419 if the finding or conclusion is ~~the term "final"~~ means not
 420 subject to judicial review.

421 Section 6. Section 68.085, Florida Statutes, is amended to
 422 read:

423 68.085 Awards to plaintiffs bringing action.—

424 (1) (a) If the department proceeds with ~~and prevails in~~ an
 425 action brought by a person under this act, subject to the
 426 requirements of paragraph (b), the person shall receive ~~except~~
 427 as provided in subsection (2), the court shall order the
 428 distribution to the person of at least 15 percent but not more
 429 than 25 percent of the proceeds ~~of the recovered under any~~
 430 judgment obtained by the department in an action under ~~s. 68.082~~
 431 or of the proceeds of any settlement of the claim, depending
 432 upon the extent to which the person substantially contributed to
 433 the prosecution of the action.

434 (b) ~~(2)~~ If the department proceeds with an action which the
 435 court finds the action to be based primarily on disclosures of

590-02624-13

20131494c1

436 specific information, other than information ~~that~~ provided by
 437 the person bringing the action, relating to allegations or
 438 transactions in a criminal, civil, or administrative hearing; a
 439 legislative, administrative, inspector general, or auditor
 440 general report, hearing, audit, or investigation; or from the
 441 news media, the court may award such sums as it considers
 442 appropriate, but in no case more than 10 percent of the proceeds
 443 ~~recovered under a judgment or received in settlement of a claim~~
 444 ~~under this act~~, taking into account the significance of the
 445 information and the role of the person bringing the action in
 446 advancing the case to litigation.

447 (c) Any payment to a person under paragraph (a) or
 448 paragraph (b) shall be made from the proceeds. The person shall
 449 also receive an amount for reasonable expenses that the court
 450 finds to have been necessarily incurred, plus reasonable
 451 attorney fees and costs. All such expenses, fees, and costs
 452 shall be awarded against the defendant.

453 (2) ~~(3)~~ If the department does not proceed with an action
 454 under this section, the person bringing the action or settling
 455 the claim shall receive an amount that ~~which~~ the court decides
 456 is reasonable for collecting the civil penalty and damages. The
 457 amount shall be not less than 25 percent and not more than 30
 458 percent of the proceeds of the action or settlement and shall be
 459 paid out of such proceeds ~~recovered under a judgment rendered in~~
 460 an action under this act or in settlement of a claim under this
 461 act. The person shall also receive an amount for reasonable
 462 expenses that the court finds to have been necessarily incurred,
 463 plus reasonable attorney fees and costs. All such expenses,
 464 fees, and costs shall be awarded against the defendant.

590-02624-13

20131494c1

465 ~~(3)(4)~~ Following any distributions under subsection (1) or
 466 subsection (2), ~~or subsection (3)~~, the state entity agency
 467 injured by the submission of a false or fraudulent claim shall
 468 be awarded an amount not to exceed its compensatory damages. If
 469 the action was based on a claim of funds from the state Medicaid
 470 program, 10 percent of any remaining proceeds shall be deposited
 471 into the Operating Trust Fund to fund rewards for persons who
 472 report and provide information relating to Medicaid fraud
 473 pursuant to s. 409.9203. Any remaining proceeds, including civil
 474 penalties awarded under s. 68.082, shall be deposited in the
 475 General Revenue Fund.

476 ~~(5) Any payment under this section to the person bringing~~
 477 ~~the action shall be paid only out of the proceeds recovered from~~
 478 ~~the defendant.~~

479 (4)(6) Regardless of whether ~~or not~~ the department proceeds
 480 with the action, if the court finds that the action was brought
 481 by a person who planned and initiated the violation of s. 68.082
 482 upon which the action was brought, the court may, to the extent
 483 the court considers appropriate, reduce the share of the
 484 proceeds of the action that ~~which~~ the person would otherwise
 485 receive under this section, taking into account the role of the
 486 person in advancing the case to litigation and any relevant
 487 circumstances pertaining to the violation. If the person
 488 bringing the action is convicted of criminal conduct arising
 489 from his or her role in the violation of s. 68.082, the person
 490 shall be dismissed from the civil action and shall not receive
 491 any share of the proceeds of the action. Such dismissal shall
 492 not prejudice the right of the department to continue the
 493 action.

Page 17 of 21

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

590-02624-13

20131494c1

494 Section 7. Section 68.086, Florida Statutes, is amended to
 495 read:

496 68.086 Expenses; attorney ~~attorney's~~ fees and costs.—

497 (1) If the department initiates an action under this act or
 498 assumes control of an action brought by a person under this act,
 499 the department shall be awarded its reasonable attorney
 500 ~~attorney's~~ fees, expenses, and costs.

501 ~~(2) If the court awards the person bringing the action~~
 502 ~~proceeds under this act, the person shall also be awarded an~~
 503 ~~amount for reasonable attorney's fees and costs. Payment for~~
 504 ~~reasonable attorney's fees and costs shall be made from the~~
 505 ~~recovered proceeds before the distribution of any award.~~

506 (2)(3) If the department does not proceed with an action
 507 under this act and the person bringing the action conducts the
 508 action, the court may award to the defendant its reasonable
 509 attorney ~~attorney's~~ fees and expenses ~~costs~~ if the defendant
 510 prevails in the action and the court finds that the claim of the
 511 person bringing the action was clearly frivolous, clearly
 512 vexatious, or brought primarily for purposes of harassment.

513 (3)(4) No liability shall be incurred by the state
 514 ~~government, the affected agency,~~ or the department for any
 515 expenses, attorney ~~attorney's~~ fees, or other costs incurred by
 516 any person in bringing or defending an action under this act.

517 Section 8. Subsections (2), (3), and (6) of section 68.087,
 518 Florida Statutes, are amended to read:

519 68.087 Exemptions to civil actions.—

520 (2) In no event may a person bring an action under s.
 521 68.083(2) based upon allegations or transactions that are the
 522 subject of a civil action or an administrative proceeding in

Page 18 of 21

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

590-02624-13 20131494c1

523 which the ~~state agency~~ is already a party.

524 (3) ~~The No~~ court shall ~~dismiss have jurisdiction over~~ an
525 action brought under this act unless opposed by the department,
526 if substantially the same based upon the public disclosure of
527 allegations or transactions as alleged in the action were
528 publicly disclosed:

529 (a) In a criminal, civil, or administrative hearing in
530 which the state is a party;

531 (b) In a legislative, administrative, inspector general, or
532 ~~other state Auditor General, Chief Financial Officer, or~~
533 ~~Department of Financial Services~~ report, hearing, audit, or
534 investigation; or

535 (c) From the news media,

536

537 unless the action is brought by the department, ~~or unless~~ the
538 person bringing the action is an original source of the
539 information. For purposes of this subsection, the term "original
540 source" means an individual who, before a public disclosure
541 under subsection (3), has voluntarily disclosed to the
542 department the information on which allegations or transactions
543 in a claim are based, or who has knowledge that is independent
544 of and materially adds to the publicly disclosed allegations or
545 transactions has direct and independent knowledge of the
546 ~~information on which the allegations are based~~ and has
547 voluntarily provided the information to the department before
548 filing an action under this section ~~act based on the~~
549 ~~information.~~

550 (6) No court shall have jurisdiction over an action brought
551 under this act against a ~~local government.~~ ~~For the purposes of~~

590-02624-13 20131494c1

552 ~~this subsection, the term "local government" means any county or~~
553 ~~municipality.~~

554 Section 9. Section 68.089, Florida Statutes, is amended to
555 read:

556 68.089 Limitation of actions; effect of interventions by
557 department.—A civil action under this act may not be brought:

558 (1) More than 6 years after the date on which the violation
559 of s. 68.082 is committed; ~~or~~

560 (2) More than 3 years after the date when facts material to
561 the right of action are known or reasonably should have been
562 known by the department ~~state official~~ charged with
563 ~~responsibility to act in the circumstances,~~ but in no event more
564 than 10 years after the date on which the violation is
565 committed, whichever occurs last; ~~or~~

566 (3) If the department elects to intervene and proceed with
567 an action brought under s. 68.083(2), the department may file
568 its own complaint or amend the complaint of a person who has
569 brought an action under s. 68.083(2) to clarify or add detail to
570 the claims in which the department is intervening and to add any
571 additional claims with respect to which the department contends
572 it is entitled to relief. For statute of limitations purposes,
573 any such pleading shall relate back to the filing date of the
574 complaint of the person who originally brought the action, to
575 the extent that the claim of the state arises out of the
576 conduct, transactions, or occurrences set forth, or attempted to
577 be set forth, in the prior complaint of that person. This
578 subsection applies to any actions under s. 68.083(2) pending on
579 or filed after July 1, 2013.

580 Section 10. Section 68.09, Florida Statutes, is amended to

590-02624-13

20131494c1

581 read:

582 68.09 Burden of proof.—

583 (1) In any action brought under this act, the department
584 ~~State of Florida~~ or the qui tam plaintiff shall be required to
585 prove all essential elements of the cause of action, including
586 damages, by a preponderance of the evidence.

587 (2) Notwithstanding any other provision of law, a final
588 judgment or decree rendered in favor of the state or the Federal
589 Government in any criminal proceeding concerning the conduct of
590 the defendant that forms the basis for a civil cause of action
591 under this act, whether upon a verdict after trial or upon a
592 plea of guilty or nolo contendere, shall estop the defendant in
593 any action by the department pursuant to this act as to all
594 matters as to which such judgment or decree would be an estoppel
595 as if the department had been a party in the criminal
596 proceeding.

597 Section 11. This act shall take effect July 1, 2013.

This bill substantially amends section 68.083 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.² The records of the legislative, executive, and judicial branches are specifically included.³

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record⁵ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶

Only the Legislature may create an exemption to public records requirements.⁷ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁸ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁰

² FLA. CONST., art. I, s. 24(a).

³ *Id.*

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁶ Section 119.07(1)(a), F.S.

⁷ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁸ FLA. CONST., art. I, s. 24(c).

⁹ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁰ FLA. CONST., art. I, s. 24(c).

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹² The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹³

Florida False Claims Act

The Florida False Claims Act (FFCA)¹⁴ authorizes civil actions by individuals and the state against persons who file false claims for payment or approval with a state agency. The Florida Legislature enacted the FFCA in 1994 and the FFCA is modeled after the Federal Civil False Claims Act.¹⁵ Actions that violate the FFCA include:

- Submitting a false claim for payment or approval;¹⁶
- Making or using a false record to get a false or fraudulent claim paid or approved;¹⁷
- Conspiring to make a false claim or to deceive an agency to get a false or fraudulent claim allowed or paid;¹⁸ or
- Making or using a false record to conceal, avoid, or decrease payments owed to the state government.¹⁹

The penalty for violating the FFCA is \$5,500 to \$11,000 per claim, plus three times the amount of damages to the state government for FFCA violations.²⁰ The Department of Financial Services or the Department of Legal Affairs (DLA) may bring an action for a false claim or may join a private action brought on the grounds outlined in the statute.²¹

SB 1494

Under current law, the DLA may investigate false claims against the state but does not have subpoena powers. The DLA reports that the lack of subpoena authority can make it difficult for the department to determine if it is appropriate to intervene in a FFCA case.

¹¹ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 68.081, F.S., *supra* note 1.

¹⁵ See House Staff Analysis and Economic Impact Statement for SB 1185 (1994 Reg. Sess.) by the House Committee on Judiciary (Mar. 15, 1994) and *see also*, Federal False Claims Act, currently codified at 31 U.S.C. ss. 3729-3733 (Supp IV. 2010).

¹⁶ Section 68.082(2)(a), F.S.

¹⁷ Section 68.082(2)(b), F.S.

¹⁸ Section 68.082(2)(c), F.S.

¹⁹ Section 68.082(2)(g), F.S.

²⁰ Section 68.082(2), F.S.

²¹ See Section 68.083, F.S.

The bill creates s. 68.0831, F.S., to grant the DLA discovery capabilities before the institution of a civil proceeding, if it has reason to believe that any person has testimony or evidence relevant to the investigation.²²

III. Effect of Proposed Changes:

The bill creates a public records exemption for a complaint of a violation of the FFCA and other information held by the DLA pursuant to an investigation of the alleged violation. Such complaint and information is confidential and exempt from public records requirements until the investigation is completed, unless the information is otherwise protected by law.

The bill provides that an investigation is completed when:

- The Department of Legal Affairs files its own action or closes its investigation without filing an action; or
- The *qui tam* action²³ is unsealed or voluntarily dismissed before unsealing.

In addition, the DLA may disclose the complaint and other information at any time to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. It provides a statement of public necessity as required by the Florida Constitution.

This bill takes effect on the same date as SB 1494 or similar legislation, which is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

²² See Senate Staff Analysis and Economic Impact Statement for SB 1494 (2013 Reg. Sess.) supra note.

²³ “*Qui tam* action” means “[a]n action brought under a statute that allows a private person to sue for a penalty, part of which the government or some specified public institution will receive.” BLACK’S LAW DICTIONARY (9th ed. 2009). See also s. 68.083(2), F.S. *Qui tam* cases usually arise from an employee of an institution such as a health care provider who discovers that violations of the FFCA are occurring. This is a type of whistleblower action. In a *qui tam* action under the FFCA, the employee will sue on behalf of the state to collect money that was illegally defrauded from the state. A private entity that brings a successful FFCA action on behalf of the state will receive an amount that the court decides is reasonable for collecting the civil penalty and damages. See ss. 68.085 and 68.086, F.S. The amount must not be less than 25 percent and not more than 30 percent of the proceeds recovered under a judgment. Section 68.085(3), F.S.

B. Public Records/Open Meetings Issues:**Vote Requirement**

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present and voting in each house. This bill creates a public records exemption; therefore, a two-thirds vote is required.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain a public necessity statement. This bill creates a public records exemption; therefore, this bill includes a public necessity statement.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Financial Services (DFS) or the Department of Legal Affairs (DLA) may bring an action for a false claim, or may join a private action brought on the grounds outlined in the statute.²⁴ The public records exemption created by this bill applies only to information held by the DLA; however, the DFS states that it currently uses the public records exemption in s. 17.0401, F.S.,²⁵ when investigating false claim allegations²⁶

²⁴ See Section 68.083, F.S.

²⁵ Section 17.0401, F.S., provides a public records exemption for information relative to an investigation conducted by the DFS's Division of Accounting and Auditing pursuant to s. 17.04, F.S., including any consumer complaint. Section 17.04,

VIII. Additional Information:

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

CS by Judiciary on March 18, 2013:

The committee substitute revises the point in time at which the complaint and other information, which relate to an investigation under the Florida False Claims Act, are subject to disclosure under the public records laws. Under the committee substitute, the records are subject to the disclosure requirements under the public records laws once an investigation is complete. Other criteria that may have authorized the Department of Legal Affairs to maintain the confidential and exempt status of the records beyond the completion of the investigation were removed from the bill.

- B. **Amendments:**

None.

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

F.S., authorizes the Division of Accounting and Auditing to conduct investigations as it deems necessary to aid in the enforcement of the Chief Financial Officer's auditing duties.

²⁶ Email correspondence, dated April 1, 2013 (on file with the Senate Governmental Oversight and Accountability Committee).

By the Committee on Judiciary; and Senator Thrasher

590-02618-13

20131496c1

A bill to be entitled

An act relating to public records; amending s. 68.083, F.S.; providing an exemption from public records requirements for a complaint and other information held by the Department of Legal Affairs pursuant to an investigation of a violation of s. 68.082, F.S., relating to false claims against the state; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing for specified disclosure; specifying duration of the exemption; specifying conditions under which an investigation is considered completed; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (8) is added to section 68.083, Florida Statutes, to read:

68.083 Civil actions for false claims.—

(8) (a) Except as otherwise provided in this subsection, the complaint and other information held by the department pursuant to an investigation of a violation of s. 68.082 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

(b) Information made confidential and exempt under

Page 1 of 3

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

590-02618-13

20131496c1

paragraph (a) may be disclosed by the department to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities.

(c) Information made confidential and exempt under paragraph (a) is no longer confidential and exempt once the investigation is completed, unless the information is otherwise protected by law.

(d) For purposes of this subsection, an investigation is completed:

1. Under subsection (1) once the department files its own action or closes its investigation without filing an action.

2. Under subsection (2) upon the unsealing of the qui tam action or upon the voluntary dismissal of the qui tam action prior to the unsealing.

Section 2. The Legislature finds that it is a public necessity that the complaint and other information held by the Department of Legal Affairs pursuant to an investigation of a violation of s. 68.082, Florida Statutes, relating to false claims against the state, be held confidential and exempt from public records requirements. Because a false claims investigation conducted by the Department of Legal Affairs may lead to the filing of an administrative or civil proceeding, the premature release of the complaint or other information held by the department could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer its duties under the Florida False Claims Act, ss. 68.081-68.092, Florida Statutes. This exemption also protects the reputation of the named defendant in the event the allegations of the qui tam complaint ultimately prove to be

Page 2 of 3

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

590-02618-13

20131496c1

59 unfounded. Without this exemption, a plaintiff can subject a
60 defendant to serious fraud allegations in the name of the state
61 merely by filing a qui tam complaint. Additionally, given the
62 department's subpoena powers for all qui tam investigations,
63 this exemption, which mirrors the existing statutory exemption
64 in s. 409.913(12), Florida Statutes, for information obtained
65 during investigations of Medicaid fraud and abuse claims, is
66 especially appropriate. Therefore, the Legislature finds that it
67 is a public necessity that the complaint and information held by
68 the Department of Legal Affairs pursuant to an investigation of
69 a violation of s. 68.082, Florida Statutes, relating to false
70 claims against the state, be held confidential and exempt from
71 public records requirements.

72 Section 3. This act shall take effect on the same date that
73 SB 1494 or similar legislation takes effect, if such legislation
74 is adopted in the same legislative session or an extension
75 thereof and becomes a law.

II. Present Situation:

Mental Retardation

Mental retardation is a condition or syndrome defined by a collection of symptoms, traits, and characteristics. Under the most current Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), the term mental retardation means a significantly subaverage intellectual functioning, such as an IQ of approximately 70 or below, and concurrent deficits of impairment in present adaptive functioning¹ in at least two of the following areas:

- Communication
- Self-care
- Home living
- Social or interpersonal skills
- Use of community resources
- Self-direction
- Functional academic skills
- Work
- Leisure
- Health
- Safety²

Onset of the disability occurs before age 18.³

Mental retardation has been defined and renamed many times. For example, in 1910, three levels of mental retardation were identified: idiot, imbecile, and moron.⁴ Additionally, feeble-mindedness and mental deficiency were used as labels for mental retardation during the late 19th and early 20th century.⁵

The Arc of the United States, an organization that advocates for and serves people with intellectual and developmental disabilities, changed its name in 1992⁶ to reflect contemporary sensibilities. The Arc notes:

The term “mental retardation” is an out-dated term that may offer some protections in some states, however, with the passage of Rosa’s Law in 2010,

¹ According to the DSM-IV, adaptive functioning relates to the person’s effectiveness in meeting the standards expected for his or her age by his or her cultural group. American Psychiatric Association, DSM-IV 42 (March 2010).

² *Id.* at 41.

³ *Id.*

⁴ Fred J. Biasini, *et al.*, Department of Psychology, University of Alabama at Birmingham, *Mental Retardation: A Symptom and a Syndrome*, available at <http://www.ibis-birthdefects.org/start/mentalSyndrome.htm> (last visited Jan. 29, 2013).

⁵ *Id.*

⁶ Prior to becoming The Arc of the United States, the organization was called the Association for Retarded Citizens of the United States. The Arc, *History of Name Changes*, available at <http://www.thearc.org/page.aspx?pid=2344> (last visited Jan. 25, 2013). In 2007, the Association for Retarded Citizens of Florida, Inc., adopted the fictitious name The Arc of Florida, and the organization officially changed its name in 2010. The Arc of Florida, *About the Arc, History*, available at http://arcflorida.org/index.php?option=com_content&view=category&layout=blog&id=5&Itemid=2 (last visited Jan. 25, 2013).

many states have replaced all terminology from mental retardation to intellectual disability. Although some still use the term “mental retardation” to be eligible for some services in a few states, in no case does having the label guarantee that supports will be available. The Arc does not encourage the use of nor promote the term mental retardation. The general public, including families, individuals, funders, administrators, and public policymakers at local, state and federal levels, are becoming aware of how offensive the term is⁷

Other organizations in the United States, such as United Cerebral Palsy, take similar positions on use of this term.⁸ In addition, the State of Washington enacted legislation in 2010 amending its statutes to make the change to “intellectual disability.”⁹

The American Psychiatric Association (APA), the organization that publishes the DSM, has undertaken a complete revision of the DSM-IV, which was originally published in 1994.¹⁰ The APA has proposed renaming “mental retardation” as “intellectual developmental disorder” in order to be consistent with current practice.¹¹ The new criteria will be released in May 2013.¹²

Current Statutory Definitions

Section 921.137, F.S., which prohibits the imposition of the death penalty on a mentally-retarded defendant, states:

“Mental retardation” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term “significantly subaverage general intellectual functioning,” for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities. The term “adaptive behavior,” for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The Agency for Persons with Disabilities shall

⁷ The Arc, *Introduction to Intellectual Disabilities* (revised Mar. 1, 2011), available at <http://www.thearc.org/page.aspx?pid=2448> (last visited Jan. 23, 2013). “Rosa’s Law” amended the language in all federal health, education, and labor laws to remove the phrase “mentally retarded” and substitute the phrase “intellectual disability.” Press Release, The White House *Remarks by the President at the Signing of the 21st Century Communications and Video Accessibility Act of 2010* (Oct. 8, 2010), available at <http://www.whitehouse.gov/the-press-office/2010/10/08/remarks-president-signing-21st-century-communications-and-video-accessib> (last visited Feb. 4, 2013).

⁸ See United Cerebral Palsy, *Legislative Agenda for the 112th Congress*, available at <http://www.ucp.org/public-policy/legislative-agenda> (last visited Jan. 25, 2013); American Association on Intellectual and Developmental Disabilities, *Definition of Intellectual Disability*, available at http://www.aaid.org/content_100.cfm?navID=21 (last visited Jan. 25, 2013).

⁹ See Revised Code of Washington 44.04.280.

¹⁰ American Psychiatric Association *Overview DSM-5 Development*, available at <http://www.dsm5.org/ABOUT/Pages?DSMVOverview.aspx> (last visited Jan. 25, 2013).

¹¹ American Psychiatric Association, *Intellectual Disability* (Dec. 18, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹² American Psychiatric Association, *DSM-5 Development, Timeline*, available at <http://www.dsm5.org/about/Pages/Timeline.aspx> (last visited Feb. 4, 2013).

adopt rules to specify the standardized intelligence tests as provided in this subsection.

The definition used in the death penalty statute is taken from the definition of “retardation” in ch. 393, F.S., the area of law relating to developmental disabilities, which defines retardation as:

[S]ignificantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that manifests before the age of 18 and can reasonably be expected to continue indefinitely. “Significantly subaverage general intellectual functioning,” for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency. “Adaptive behavior,” for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.¹³

The statutory definition of developmental disability indicates that it *is* attributable to mental retardation, among other conditions. Section 393.063(9), F.S., defines “developmental disability” as:

[A] disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

Individuals with developmental disabilities may be eligible for a variety of home and community based services through the Agency for Persons with Disabilities and other state and federal entities.

The term “intellectual disability” is not currently defined in the Florida Statutes, although the term is defined, and is interchangeable with the term “mental retardation,” pursuant to Rule 65G-4.014(3) of the Florida Administrative Code. The Rule, states:

Mental Retardation or Intellectual Disability – is evidenced by the concurrent existence of:

- (a) Significantly subaverage general intellectual functioning evidenced by an Intelligence Quotient (IQ) two or more standard deviations below the mean on an individually administered standardized intelligence test, and
- (b) Significant deficits in adaptive functioning in one or more of the following areas:
 1. Communication skills,
 2. Self-care, home living,
 3. Social and interpersonal skills,
 4. Use of community resources and self-direction,
 5. Functional academic skills,
 6. Work, leisure, health and safety awareness and skills,

¹³ Section 393.063(32), F.S.

- (c) Which are manifested prior to age 18; and
- (d) Constitute a substantial handicap which is reasonably expected to continue indefinitely.

In 2008, the term “intellectual disability” was substituted for the term “mentally handicapped” in the definition of “exceptional student” as the term is used in the statutes creating the McKay Scholarship Program.¹⁴

III. Effect of Proposed Changes:

This bill substitutes the term “intellectual disability” for “mental retardation” throughout the Florida Statutes. Specifically, the term “intellectual disability” is being used in statutes pertaining to:

- Persons disqualified or excused from jury service (s. 40.013, F.S.);
- Actions by executors, administrators, trustees, etc. (s. 86.041, F.S.);
- Certain judicial or other proceedings involving victims or witnesses under the age of 16 or person with mental retardation (ss. 92.53, 92.54, and 92.55, F.S.);
- Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors (s. 383.14, F.S.);
- Developmental Disabilities (ss. 393.063 and 393.11, F.S.);
- Mental Health (s. 394.455, F.S.);
- Intermediate Care Facilities for Developmentally Disabled Persons (s. 400.960, F.S.);
- Medicaid (s. 409.908, F.S.);
- Vocational Rehabilitation (s. 413.20, F.S.);
- Special Disability Trust Fund (s. 440.49, F.S.);
- Advertising and labeling of drugs, devices, and cosmetics; exemptions (s. 499.0054, F.S.);
- Insurance (ss. 627.6041, 627.6615, 641.31, and 650.05, F.S.);
- Health Care Surrogates (s. 765.204, F.S.);
- Gambling (s. 849.04, F.S.);
- Criminal proceedings relating to victims under age 16 or persons with mental retardation (ss. 914.16, 914.17, and 918.16, F.S.);
- Mentally Deficient and Mentally Ill Defendants (ss. 916.105, 916.106, 916.107, 916.301, 916.302, 916.3025, 916.303, and 916.304, F.S.);
- Prohibition on imposition of the death sentence upon a defendant with mental retardation (s. 921.137, F.S.);
- Extradition of persons alleged to be of unsound mind (s. 941.38, F.S.);

¹⁴ “Exceptional student” means any student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students who are gifted and students with disabilities who have an intellectual disability; autism spectrum disorder; a speech impairment; an orthopedic impairment; an other health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard of hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays are mentally handicapped, speech and language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospital and homebound, autistic, developmentally delayed children, ages birth through 5 years, or children, ages birth through 2 years, with established conditions that are identified in State Board of Education rules pursuant to s. 1003.21(1)(e). Chapter 2008-204, s. 3, Laws of Fla.

- Department of Corrections and State Correctional Institution (ss. 944.602, 945.025, 945.12, and 945.42, F.S.);
- Application for mental retardation services as condition of parole (s. 947.185, F.S.);
- Children and Families in Need of Services (s. 984.19, F.S.); and
- Juvenile Justice; Interstate Compact on Juveniles (ss. 985.14, 985.145, 985.18, 985.19, 985.195, and 985.61, F.S.)

The bill does not make substantive changes to any of the statutes so revised.

The bill also amends ss. 39.502 and 320.10, F.S., by replacing the name “the Association for Retarded Citizens” with “the Arc of Florida” to reflect the current name of the organization.

The bill includes legislative intent in order to avoid any potential confusion which might arise as the new term is applied because the American Psychiatric Association has not yet released the DSM-5, formally adopting the term “intellectual disability” rather than “mental retardation,” and because use of the term “intellectual disability” has not yet become universal. Specifically:

- The changes made by the bill are not intended to expand or contract the scope of the Florida Statutes; and
- The bill may not be construed to change the application of any provision of the Florida Statutes to any person.

In addition, the bill clarifies that as the new terminology is applied in the pretrial, trial, sentencing, and death penalty areas of the criminal law, it has the same meaning and is interchangeable with the terms “mental retardation,” “retardation,” and “mentally retarded.”¹⁵

The bill makes a number of technical corrections to the Florida Statutes, including:

- Removing definitions, from part VIII of ch. 400, F.S., of terms that are no longer used in that part;
- Removing obsolete grandfathering language from s. 514.072, F.S., relating to certification of swimming instructors for people with developmental disabilities; and
- Renaming part III of ch. 916, F.S., as “Forensic Services for Persons who are Intellectually Disabled or Autistic.”

Finally, the bill amends s. 408.032, F.S., to provide that an “intermediate care facility for the developmentally disabled” means a residential facility licensed under part VIII of ch. 400, F.S., rather than under ch. 393, F.S.

The bill does not have any fiscal impact to the state and provides an effective date of July 1, 2013.

¹⁵ See sections 9 and 38 of the bill.

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:

In the past, the Department of Corrections (DOC or department), has indicated that the bill would require revisions to be made to the department's procedures, health services bulletins, and Offender Based Information System codes because they reference the standardized professional terminology and diagnostic codes set forth in the DSM-IV.¹⁶ Other agencies may need to make similar changes. However, these changes will be required regardless of when the DSM-V manual is released with the revised definition.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁶ Tommy Maggitas, Department of Corrections, *SB 460-Intellectual Disabilities* (Jan. 10, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

VIII. Additional Information:

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

CS by Criminal Justice on April 1, 2013:

Changed “2012” to “2013” on line 1635. This amendment corrected a technical problem with the date of the application of the new terms set forth in the bill (intellectual disability and intellectually disabled).

- 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 the Committee on Criminal Justice; and Senators Altman and Sobel

591-03334-13

2013142c1

1 A bill to be entitled
 2 An act relating to intellectual disabilities; amending
 3 s. 39.502, F.S.; substituting the Arc of Florida for
 4 the Association for Retarded Citizens for purposes of
 5 certain proceedings relating to children; amending ss.
 6 40.013, 86.041, 92.53, 92.54, and 92.55, F.S.;
 7 substituting the term "intellectual disability" for
 8 the term "mental retardation"; amending s. 320.10,
 9 F.S.; substituting the Arc of Florida for the
 10 Association for Retarded Citizens; amending ss.
 11 383.14, 393.063, 393.11, and 394.455, F.S.;
 12 substituting the term "intellectual disability" for
 13 the term "mental retardation"; clarifying in s.
 14 393.063, that the meaning of the terms "intellectual
 15 disability" or "intellectually disabled" is the same
 16 as the meaning of the terms "mental retardation,"
 17 "retarded," and "mentally retarded" for purposes of
 18 matters relating to the criminal laws and court rules;
 19 amending s. 400.960, F.S.; revising definitions
 20 relating to intermediate care facilities for the
 21 developmentally disabled to delete unused terms;
 22 amending s. 408.032, F.S.; conforming a cross-
 23 reference; amending s. 409.908, F.S.; substituting the
 24 term "intellectually disabled" for the term "mentally
 25 retarded"; amending ss. 413.20, 440.49, and 499.0054,
 26 F.S.; substituting the term "intellectual disability"
 27 for the term "mental retardation"; amending s.
 28 514.072, F.S.; conforming a cross-reference and
 29 deleting obsolete provisions; amending ss. 627.6041,

Page 1 of 69

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

591-03334-13

2013142c1

30 627.6615, 641.31, 650.05, 765.204, 849.04, 914.16,
 31 914.17, 916.105, and 916.106, F.S.; substituting the
 32 term "intellectual disability" for the term "mental
 33 retardation"; amending s. 916.107, F.S.; substituting
 34 the term "intellectual disability" for the term
 35 "retardation"; providing a directive to the Division
 36 of Law Revision and Information; amending ss. 916.301,
 37 916.3012, 916.302, 916.3025, 916.303, 916.304, 918.16,
 38 921.137, 941.38, 944.602, 945.025, 945.12, 945.42,
 39 947.185, 984.19, 985.14, 985.145, 985.18, 985.19,
 40 985.195, and 985.61, F.S.; clarifying in s. 921.137,
 41 F.S., that the terms "intellectual disability" or
 42 "intellectually disabled" are interchangeable with and
 43 have the same meaning as the terms "mental
 44 retardation," or "retardation" and "mentally
 45 retarded," as defined before the effective date of the
 46 act; substituting the term "intellectual disability"
 47 for the term "mental retardation"; expressing
 48 legislative intent; providing an effective date.

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

51
 52 Section 1. Subsection (15) of section 39.502, Florida
 53 Statutes, is amended to read:

54 39.502 Notice, process, and service.—

55 (15) A party who is identified as a person who has a ~~with~~
 56 mental illness or ~~with~~ a developmental disability must be
 57 informed by the court of the availability of advocacy services
 58 through the department, the Arc of Florida ~~Association for~~

Page 2 of 69

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

591-03334-13 2013142c1

59 ~~Retarded Citizens~~, or other appropriate mental health or
60 developmental disability advocacy groups and encouraged to seek
61 such services.

62 Section 2. Subsection (9) of section 40.013, Florida
63 Statutes, is amended to read:

64 40.013 Persons disqualified or excused from jury service.—

65 (9) Any person who is responsible for the care of a person
66 who, because of mental illness, intellectual disability ~~mental~~
67 ~~retardation~~, senility, or other physical or mental incapacity,
68 is incapable of caring for himself or herself shall be excused
69 from jury service upon request.

70 Section 3. Section 86.041, Florida Statutes, is amended to
71 read:

72 86.041 Actions by executors, administrators, trustees,
73 etc.—Any person interested as or through an executor,
74 administrator, trustee, guardian, or other fiduciary, creditor,
75 devisee, legatee, heir, next of kin, or cestui que trust, in the
76 administration of a trust, a guardianship, or ~~of~~ the estate of a
77 decedent, an infant, a mental incompetent, or insolvent may have
78 a declaration of rights or equitable or legal relations to ~~in~~
79 ~~respect thereto~~:

80 (1) ~~To~~ Ascertain any class of creditors, devisees,
81 legatees, heirs, next of kin, or others; ~~or~~

82 (2) ~~To~~ Direct the executor, administrator, or trustee to
83 refrain from doing any particular act in his or her fiduciary
84 capacity; or

85 (3) ~~To~~ Determine any question relating to ~~arising in~~ the
86 administration of the guardianship, estate, or trust, including
87 questions of construction of wills and other writings.

591-03334-13 2013142c1

88
89 For the purpose of this section, a "mental incompetent" is one
90 who, because of mental illness, intellectual disability ~~mental~~
91 ~~retardation~~, senility, excessive use of drugs or alcohol, or
92 other mental incapacity, is incapable of ~~either~~ managing his or
93 her property or caring for himself or herself, or both.

94 Section 4. Section 92.53, Florida Statutes, is amended to
95 read:

96 92.53 Videotaping the ~~of~~ testimony of a victim or witness
97 under age 16 or who has an intellectual disability ~~person with~~
98 ~~mental retardation~~.—

99 (1) On motion and hearing in camera and a finding that
100 there is a substantial likelihood that a victim or witness who
101 is under the age of 16 or who has an intellectual disability ~~is~~
102 ~~a person with mental retardation~~ as defined in s. 393.063 would
103 suffer at least moderate emotional or mental harm due to the
104 presence of the defendant if such victim or witness ~~the child or~~
105 ~~person with mental retardation~~ is required to testify in open
106 court, or ~~that such victim or witness is otherwise~~ unavailable
107 as defined in s. 90.804(1), the trial court may order the
108 videotaping of the testimony of the victim or witness in a case,
109 whether civil or criminal in nature, in which videotaped
110 testimony is to be used ~~utilized~~ at trial in lieu of trial
111 testimony in open court.

112 (2) The motion may be filed by:

113 (a) The victim or witness, or the victim's or witness's
114 attorney, parent, legal guardian, or guardian ad litem;

115 (b) A trial judge on his or her own motion;

116 (c) Any party in a civil proceeding; or

591-03334-13

2013142c1

117 (d) The prosecuting attorney or the defendant, or the
118 defendant's counsel.

119 (3) The judge shall preside, or shall appoint a special
120 master to preside, at the videotaping unless ~~the following~~
121 ~~conditions are met:~~

122 (a) The child or the person who has the intellectual
123 disability ~~with mental retardation~~ is represented by a guardian
124 ad litem or counsel;

125 (b) The representative of the victim or witness and the
126 counsel for each party stipulate that the requirement for the
127 presence of the judge or special master may be waived; and

128 (c) The court finds at a hearing on the motion that the
129 presence of a judge or special master is not necessary to
130 protect the victim or witness.

131 (4) The defendant and the defendant's counsel must ~~shall~~ be
132 present at the videotaping, unless the defendant has waived this
133 right. The court may require the defendant to view the testimony
134 from outside the presence of the child or the person who has an
135 intellectual disability ~~with mental retardation~~ by means of a
136 two-way mirror or another similar method that ensures ~~will~~
137 ~~ensure~~ that the defendant can observe and hear the testimony of
138 the victim or witness in person, but ~~that~~ the victim or witness
139 cannot hear or see the defendant. The defendant and the attorney
140 for the defendant may communicate by any appropriate private
141 method.

142 (5) Any party, or the court on its own motion, may request
143 the aid of an interpreter, as provided in s. 90.606, to aid the
144 parties in formulating methods of questioning the child or
145 person who has the intellectual disability ~~with mental~~

591-03334-13

2013142c1

146 ~~retardation~~ and in interpreting the answers of the child or
147 person during ~~with mental retardation throughout~~ proceedings
148 conducted under this section.

149 (6) The motion referred to in subsection (1) may be made at
150 any time with reasonable notice to each party to the cause, and
151 videotaping of testimony may be made any time after the court
152 grants the motion. The videotaped testimony is ~~shall be~~
153 admissible as evidence in the trial of the cause; however, such
154 testimony is ~~shall~~ not be admissible in any trial or proceeding
155 in which such witness testifies by use of closed circuit
156 television pursuant to s. 92.54.

157 (7) The court shall make specific findings of fact, on the
158 record, as to the basis for its ruling under this section.

159 Section 5. Section 92.54, Florida Statutes, is amended to
160 read:

161 92.54 Use of closed circuit television in proceedings
162 involving a victim or witness ~~victims or witnesses~~ under the age
163 of 16 or who has an intellectual disability ~~persons with mental~~
164 ~~retardation.~~

165 (1) Upon motion and hearing in camera and upon a finding
166 that there is a substantial likelihood that a victim or witness
167 under the age of 16 or who has an intellectual disability ~~the~~
168 ~~child or person with mental retardation~~ will suffer at least
169 moderate emotional or mental harm due to the presence of the
170 defendant if such victim or witness ~~the child or person with~~
171 ~~mental retardation~~ is required to testify in open court, or ~~that~~
172 ~~such victim or witness~~ is unavailable as defined in s.
173 90.804(1), the trial court may order that the testimony of the ~~a~~
174 ~~child under the age of 16 or person with mental retardation who~~

591-03334-13

2013142c1

175 ~~is a~~ victim or witness be taken outside of the courtroom and
176 shown by means of closed circuit television.

177 (2) The motion may be filed by the victim or witness; the
178 attorney, parent, legal guardian, or guardian ad litem of the
179 victim or witness; the prosecutor; the defendant or the
180 defendant's counsel; or the trial judge on his or her own
181 motion.

182 (3) Only the judge, the prosecutor, the defendant, the
183 attorney for the defendant, the operators of the videotape
184 equipment, an interpreter, and some other person who, in the
185 opinion of the court, contributes to the well-being of the child
186 or the person who has an intellectual disability with mental
187 ~~retardation~~ and who will not be a witness in the case may be in
188 the room during the recording of the testimony.

189 (4) During the victim's or witness's child's or person's
190 ~~with mental retardation~~ testimony by closed circuit television,
191 the court may require the defendant to view the testimony from
192 the courtroom. In such a case, the court shall permit the
193 defendant to observe and hear the testimony of the victim or
194 witness child or person with mental retardation, but ~~must shall~~
195 ensure that the victim or witness child or person with mental
196 ~~retardation~~ cannot hear or see the defendant. The defendant's
197 right to assistance of counsel, which includes the right to
198 immediate and direct communication with counsel conducting
199 cross-examination, must be protected and, upon the defendant's
200 request, such communication ~~must shall~~ be provided by any
201 appropriate electronic method.

202 (5) The court shall make specific findings of fact, on the
203 record, as to the basis for its ruling under this section.

Page 7 of 69

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

591-03334-13

2013142c1

204 Section 6. Section 92.55, Florida Statutes, is amended to
205 read:

206 92.55 Judicial or other proceedings involving victim or
207 witness under the age of 16 or person who has an intellectual
208 disability with mental retardation; special protections; use of
209 registered service or therapy animals.—

210 (1) Upon motion of any party, upon motion of a parent,
211 guardian, attorney, or guardian ad litem for a victim or witness
212 child under the age of 16 or person who has an intellectual
213 disability with mental retardation, or upon its own motion, the
214 court may enter any order necessary to protect such a child
215 ~~under the age of 16 or person with mental retardation who is a~~
216 victim or witness in any judicial proceeding or other official
217 proceeding from severe emotional or mental harm due to the
218 presence of the defendant if the victim or witness child or
219 person with mental retardation is required to testify in open
220 court. Such orders ~~must shall~~ relate to the taking of testimony
221 and ~~shall~~ include, but are not be limited to:

222 (a) Interviewing or the taking of depositions as part of a
223 civil or criminal proceeding.

224 (b) Examination and cross-examination for the purpose of
225 qualifying as a witness or testifying in any proceeding.

226 (c) The use of testimony taken outside of the courtroom,
227 including proceedings under ss. 92.53 and 92.54.

228 (2) In ruling upon the motion, the court shall consider
229 ~~take into consideration~~:

230 (a) The age of the child, the nature of the offense or act,
231 the relationship of the child to the parties in the case or to
232 the defendant in a criminal action, the degree of emotional

Page 8 of 69

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

591-03334-13 2013142c1

233 trauma that will result to the child as a consequence of the
 234 defendant's presence, and any other fact that the court deems
 235 relevant; or

236 (b) The age of the person who has an intellectual
 237 disability with mental retardation, the functional capacity of
 238 such the person with mental retardation, the nature of the
 239 offenses or act, the relationship of the person with mental
 240 retardation to the parties in the case or to the defendant in a
 241 criminal action, the degree of emotional trauma that will result
 242 to the person with mental retardation as a consequence of the
 243 defendant's presence, and any other fact that the court deems
 244 relevant.

245 (3) In addition to such other relief ~~as is~~ provided by law,
 246 the court may enter orders limiting the number of times that a
 247 child or a person who has an intellectual disability with mental
 248 retardation may be interviewed, prohibiting depositions of such
 249 a child or person with mental retardation, requiring the
 250 submission of questions before the ~~prior to~~ examination of the a
 251 child or person with mental retardation, setting the place and
 252 conditions for interviewing the a child or person with mental
 253 retardation or for conducting any other proceeding, or
 254 permitting or prohibiting the attendance of any person at any
 255 proceeding. The court shall enter any order necessary to protect
 256 the rights of all parties, including the defendant in any
 257 criminal action.

258 (4) The court may set any other conditions it finds just
 259 and appropriate when on the taking the of testimony of by a
 260 child, including the use of a service or therapy animal that has
 261 been evaluated and registered according to national standards,

591-03334-13 2013142c1

262 in any proceeding involving a sexual offense. When deciding
 263 whether to permit a child to testify with the assistance of a
 264 registered service or therapy animal, the court shall consider
 265 ~~take into consideration~~ the age of the child, the interests of
 266 the child, the rights of the parties to the litigation, and any
 267 other relevant factor that would facilitate the testimony by the
 268 child.

269 Section 7. Subsection (1) of section 320.10, Florida
 270 Statutes, is amended to read:

271 320.10 Exemptions.—

272 (1) The provisions of s. 320.08 do not apply to:

273 (a) Any motor vehicle or mobile home owned by, and operated
 274 exclusively for the personal use of, any member of the United
 275 States Armed Forces who is not a resident of this state and who
 276 is stationed in the state while in compliance with military or
 277 naval orders;

278 (b) Any motor vehicle owned or operated exclusively by the
 279 Federal Government;

280 (c) Any motor vehicle owned and operated exclusively for
 281 the benefit of the Boys' Clubs of America, the National Audubon
 282 Society, the National Children's Cardiac Hospital, any humane
 283 society, any nationally chartered veterans' organization that
 284 maintains a state headquarters in this state, the Children's
 285 Bible Mission, the Boy Scouts of America, the Girl Scouts of
 286 America, the Salvation Army, the American National Red Cross,
 287 the United Service Organization, any local member unit of the
 288 National Urban League which provides free services to municipal
 289 and county residents who are in need of such services, the Young
 290 Men's Christian Association, the Young Men's Hebrew Association,

591-03334-13

2013142c1

291 the Camp Fire Girls' Council, the Young Women's Christian
 292 Association, the Young Women's Hebrew Association, any local
 293 member unit of the Arc of Florida Association for Retarded
 294 ~~Citizens~~, the Children's Home Society of Florida, or the
 295 Goodwill Industries. A not-for-profit organization named in this
 296 paragraph and its local affiliate organizations ~~is shall be~~
 297 eligible for the exemption if it ~~for so long as each~~ maintains
 298 current articles of incorporation on file with the Department of
 299 State and qualifies as a not-for-profit organization under s.
 300 212.08;

301 (d) Any motor vehicle owned and operated by a church,
 302 temple, or synagogue for exclusive use as a community service
 303 van or to transport passengers without compensation to religious
 304 services or for religious education;

305 (e) Any motor vehicle owned and operated by the Civil Air
 306 Patrol or the United States Coast Guard Auxiliary;

307 (f) Any mobile blood bank unit when operated as a nonprofit
 308 service by an organization;

309 (g) Any mobile X-ray unit or truck or bus used exclusively
 310 for public health purposes;

311 (h) Any school bus owned and operated by a nonprofit
 312 educational or religious corporation;

313 (i) Any vehicle used by any of the various search and
 314 rescue units of the several counties for exclusive use as a
 315 search and rescue vehicle; ~~or and~~

316 (j) Any motor vehicle used by a community transportation
 317 coordinator or a transportation operator as defined in part I of
 318 chapter 427, and which is used exclusively to transport
 319 transportation disadvantaged persons.

591-03334-13

2013142c1

320 Section 8. Paragraph (d) of subsection (3) of section
 321 383.14, Florida Statutes, is amended to read:

322 383.14 Screening for metabolic disorders, other hereditary
 323 and congenital disorders, and environmental risk factors.—

324 (3) DEPARTMENT OF HEALTH; POWERS AND DUTIES.—The department
 325 shall administer and provide certain services to implement the
 326 provisions of this section and shall:

327 (d) Maintain a confidential registry of cases, including
 328 information of importance for the purpose of followup services
 329 to prevent intellectual disabilities ~~mental retardation~~, to
 330 correct or ameliorate physical disabilities ~~handicaps~~, and for
 331 epidemiologic studies, if indicated. Such registry shall be
 332 exempt from the provisions of s. 119.07(1).

333
 334 All provisions of this subsection must be coordinated with the
 335 provisions and plans established under this chapter, chapter
 336 411, and Pub. L. No. 99-457.

337 Section 9. Subsection (9) and subsections (21) through (32)
 338 of section 393.063, Florida Statutes, are reordered and amended
 339 to read:

340 393.063 Definitions.—For the purposes of this chapter, the
 341 term:

342 (9) "Developmental disability" means a disorder or syndrome
 343 that is attributable to intellectual disability ~~retardation~~,
 344 cerebral palsy, autism, spina bifida, or Prader-Willi syndrome;
 345 that manifests before the age of 18; and that constitutes a
 346 substantial handicap that can reasonably be expected to continue
 347 indefinitely.

348 (22) ~~(21)~~ "Intermediate care facility for the

591-03334-13 2013142c1

349 developmentally disabled" or "ICF/DD" means a residential
 350 facility licensed and certified under ~~pursuant to~~ part VIII of
 351 chapter 400.

352 ~~(23)(22)~~ "Medical/dental services" means medically
 353 necessary services ~~that which~~ are provided or ordered for a
 354 client by a person licensed under chapter 458, chapter 459, or
 355 chapter 466. Such services may include, but are not limited to,
 356 prescription drugs, specialized therapies, nursing supervision,
 357 hospitalization, dietary services, prosthetic devices, surgery,
 358 specialized equipment and supplies, adaptive equipment, and
 359 other services as required to prevent or alleviate a medical or
 360 dental condition.

361 ~~(24)(23)~~ "Personal care services" means individual
 362 assistance with or supervision of essential activities of daily
 363 living for self-care, including ambulation, bathing, dressing,
 364 eating, grooming, and toileting, and other similar services that
 365 are incidental to the care furnished and essential to the
 366 health, safety, and welfare of the client ~~if when there is~~ no
 367 one else is available to perform those services.

368 ~~(25)(24)~~ "Prader-Willi syndrome" means an inherited
 369 condition typified by neonatal hypotonia with failure to thrive,
 370 hyperphagia or an excessive drive to eat which leads to obesity
 371 usually at 18 to 36 months of age, mild to moderate intellectual
 372 disability ~~mental retardation~~, hypogonadism, short stature, mild
 373 facial dysmorphism, and a characteristic neurobehavior.

374 ~~(26)(25)~~ "Relative" means an individual who is connected by
 375 affinity or consanguinity to the client and who is 18 years of
 376 age or older.

377 ~~(27)(26)~~ "Resident" means a any person who has a ~~with~~

591-03334-13 2013142c1

378 developmental disability and resides ~~disabilities residing~~ at a
 379 residential facility, whether or not such person is a client of
 380 the agency.

381 ~~(28)(27)~~ "Residential facility" means a facility providing
 382 room and board and personal care for persons who have ~~with~~
 383 developmental disabilities.

384 ~~(29)(28)~~ "Residential habilitation" means supervision and
 385 training with the acquisition, retention, or improvement in
 386 skills related to activities of daily living, such as personal
 387 hygiene skills, homemaking skills, and the social and adaptive
 388 skills necessary to enable the individual to reside in the
 389 community.

390 ~~(30)(29)~~ "Residential habilitation center" means a
 391 community residential facility licensed under this chapter which
 392 provides habilitation services. The capacity of such a facility
 393 may ~~shall~~ not be fewer than nine residents. After October 1,
 394 1989, new residential habilitation centers may not be licensed
 395 and the licensed capacity for any existing residential
 396 habilitation center may not be increased.

397 ~~(31)(30)~~ "Respite service" means appropriate, short-term,
 398 temporary care that is provided to a person who has a ~~with~~
 399 developmental disability in order ~~disabilities~~ to meet the
 400 planned or emergency needs of the person or the family or other
 401 direct service provider.

402 ~~(32)(31)~~ "Restraint" means a physical device, method, or
 403 drug used to control dangerous behavior.

404 (a) A physical restraint is any manual method or physical
 405 or mechanical device, material, or equipment attached or
 406 adjacent to an ~~the~~ individual's body so that he or she cannot

591-03334-13 2013142c1

407 easily remove the restraint and which restricts freedom of
408 movement or normal access to one's body.

409 (b) A drug used as a restraint is a medication used to
410 control the person's behavior or to restrict his or her freedom
411 of movement and is not a standard treatment for the person's
412 medical or psychiatric condition. Physically holding a person
413 during a procedure to forcibly administer psychotropic
414 medication is a physical restraint.

415 (c) Restraint does not include physical devices, such as
416 orthopedically prescribed appliances, surgical dressings and
417 bandages, supportive body bands, or other physical holding ~~when~~
418 necessary for routine physical examinations and tests; for
419 purposes of orthopedic, surgical, or other similar medical
420 treatment; ~~when used~~ to provide support for the achievement of
421 functional body position or proper balance; or ~~when used~~ to
422 protect a person from falling out of bed.

423 ~~(21)(32)~~ "Intellectual disability" ~~"Retardation"~~ means
424 significantly subaverage general intellectual functioning
425 existing concurrently with deficits in adaptive behavior which
426 ~~that~~ manifests before the age of 18 and can reasonably be
427 expected to continue indefinitely. For the purposes of this
428 definition, the term:

429 (a) "Adaptive behavior" means the effectiveness or degree
430 with which an individual meets the standards of personal
431 independence and social responsibility expected of his or her
432 age, cultural group, and community.

433 (b) "Significantly subaverage general intellectual
434 functioning," for the purpose of this definition, means
435 performance that ~~which~~ is two or more standard deviations from

591-03334-13 2013142c1

436 the mean score on a standardized intelligence test specified in
437 the rules of the agency. ~~"Adaptive behavior," for the purpose of~~
438 ~~this definition, means the effectiveness or degree with which an~~
439 ~~individual meets the standards of personal independence and~~
440 ~~social responsibility expected of his or her age, cultural~~
441 ~~group, and community.~~

442
443 For purposes of the application of the criminal laws and
444 procedural rules of this state to matters relating to pretrial,
445 trial, sentencing, and any matters relating to the imposition
446 and execution of the death penalty, the terms "intellectual
447 disability" or "intellectually disabled" are interchangeable
448 with and have the same meaning as the terms "mental retardation"
449 or "retardation" and "mentally retarded" as defined in this
450 section before July 1, 2013.

451 Section 10. Subsection (1), paragraphs (c) and (d) of
452 subsection (2), paragraphs (b) through (d) of subsection (3),
453 paragraph (b) of subsection (4), paragraphs (b), (e), (f), and
454 (g) of subsection (5), subsection (6), paragraph (d) of
455 subsection (7), paragraph (b) of subsection (8), subsection
456 (10), and paragraph (b) of subsection (12) of section 393.11,
457 Florida Statutes, are amended to read:

458 393.11 Involuntary admission to residential services.—

459 (1) JURISDICTION.—~~If when~~ a person has an intellectual
460 disability is mentally retarded and requires involuntary
461 admission to residential services provided by the agency, the
462 circuit court of the county in which the person resides has
463 ~~shall have~~ jurisdiction to conduct a hearing and enter an order
464 involuntarily admitting the person in order for ~~that~~ the person

591-03334-13

2013142c1

465 to ~~may~~ receive the care, treatment, habilitation, and
 466 rehabilitation ~~that which~~ the person needs. For the purpose of
 467 identifying intellectual disability ~~mental retardation~~,
 468 diagnostic capability shall be established by the agency. Except
 469 as otherwise specified, the proceedings under this section are
 470 ~~shall be~~ governed by the Florida Rules of Civil Procedure.

(2) PETITION.—

472 (c) The petition shall be verified and must shall:

- 473 1. State the name, age, and present address of the
 474 commissioners and their relationship to the person who has an
 475 intellectual disability ~~with mental retardation~~ or autism;
 476 2. State the name, age, county of residence, and present
 477 address of the person who has an intellectual disability with
 478 ~~mental retardation~~ or autism;
 479 3. Allege that the commission believes that the person
 480 needs involuntary residential services and specify the factual
 481 information on which the belief is based;
 482 4. Allege that the person lacks sufficient capacity to give
 483 express and informed consent to a voluntary application for
 484 services and lacks the basic survival and self-care skills to
 485 provide for the person's well-being or is likely to physically
 486 injure others if allowed to remain at liberty; and
 487 5. State which residential setting is the least restrictive
 488 and most appropriate alternative and specify the factual
 489 information on which the belief is based.
- 490 (d) The petition must shall be filed in the circuit court
 491 of the county in which the person who has the intellectual
 492 disability with mental retardation or autism resides.

(3) NOTICE.—

Page 17 of 69

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

591-03334-13

2013142c1

494 (b) ~~If whenever~~ a motion or petition has been filed
 495 pursuant to s. 916.303 to dismiss criminal charges against a
 496 defendant who has an intellectual disability with ~~retardation~~ or
 497 autism, and a petition is filed to involuntarily admit the
 498 defendant to residential services under this section, the notice
 499 of the filing of the petition must shall also be given to the
 500 defendant's attorney, the state attorney of the circuit from
 501 which the defendant was committed, and the agency.

502 (c) The notice must shall state that a hearing shall be set
 503 to inquire into the need of the person who has an intellectual
 504 disability with mental retardation or autism for involuntary
 505 residential services. The notice must shall also state the date
 506 of the hearing on the petition.

507 (d) The notice must shall state that the individual who has
 508 an intellectual disability with mental retardation or autism has
 509 the right to be represented by counsel of his or her own choice
 510 and that, if the person cannot afford an attorney, the court
 511 shall appoint one.

(4) AGENCY PARTICIPATION.—

513 (b) Following examination, the agency shall file a written
 514 report with the court at least ~~not less than~~ 10 working days
 515 before the date of the hearing. The report must be served on the
 516 petitioner, the person who has the intellectual disability with
 517 ~~mental retardation~~, and the person's attorney at the time the
 518 report is filed with the court.

(5) EXAMINING COMMITTEE.—

520 (b) The court shall appoint at least ~~no fewer than~~ three
 521 disinterested experts who have demonstrated to the court an
 522 expertise in the diagnosis, evaluation, and treatment of persons

Page 18 of 69

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

591-03334-13

2013142c1

523 who have intellectual disabilities ~~with mental retardation~~. The
 524 committee must include at least one licensed and qualified
 525 physician, one licensed and qualified psychologist, and one
 526 qualified professional ~~who, at with~~ a minimum, ~~has of~~ a masters
 527 degree in social work, special education, or vocational
 528 rehabilitation counseling, to examine the person and to testify
 529 at the hearing on the involuntary admission to residential
 530 services.

531 (e) The committee shall prepare a written report for the
 532 court. The report must explicitly document the extent that the
 533 person meets the criteria for involuntary admission. The report,
 534 and expert testimony, must include, but not be limited to:

535 1. The degree of the person's intellectual disability
 536 ~~mental retardation~~ and whether, using diagnostic capabilities
 537 established by the agency, the person is eligible for agency
 538 services;

539 2. Whether, because of the person's degree of intellectual
 540 disability ~~mental retardation~~, the person:

541 a. Lacks sufficient capacity to give express and informed
 542 consent to a voluntary application for services pursuant to s.
 543 393.065;

544 b. Lacks basic survival and self-care skills to such a
 545 degree that close supervision and habilitation in a residential
 546 setting is necessary and if not provided would result in a real
 547 and present threat of substantial harm to the person's well-
 548 being; or

549 c. Is likely to physically injure others if allowed to
 550 remain at liberty.

551 3. The purpose to be served by residential care;

591-03334-13

2013142c1

552 4. A recommendation on the type of residential placement
 553 which would be the most appropriate and least restrictive for
 554 the person; and

555 5. The appropriate care, habilitation, and treatment.

556 (f) The committee shall file the report with the court at
 557 least not less than 10 working days before the date of the
 558 hearing. The report ~~must shall~~ be served on the petitioner, the
 559 person who has the intellectual disability ~~with mental~~
 560 ~~retardation~~, the person's attorney at the time the report is
 561 filed with the court, and the agency.

562 (g) Members of the examining committee shall receive a
 563 reasonable fee to be determined by the court. The fees ~~shall are~~
 564 ~~to~~ be paid from the general revenue fund of the county in which
 565 the person who has the intellectual disability ~~with mental~~
 566 ~~retardation~~ resided when the petition was filed.

567 (6) COUNSEL; GUARDIAN AD LITEM.—

568 (a) The person who has the intellectual disability ~~must~~
 569 ~~with mental retardation shall~~ be represented by counsel at all
 570 stages of the judicial proceeding. ~~If in the event~~ the person is
 571 indigent and cannot afford counsel, the court shall appoint a
 572 public defender at least not less than 20 working days before
 573 the scheduled hearing. The person's counsel shall have full
 574 access to the records of the service provider and the agency. In
 575 all cases, the attorney shall represent the rights and legal
 576 interests of the person ~~with mental retardation~~, regardless of
 577 who ~~initiates may initiate~~ the proceedings or ~~pays pay~~ the
 578 attorney's fee.

579 (b) If the attorney, during the course of his or her
 580 representation, reasonably believes that the person who has the

591-03334-13 2013142c1

581 intellectual disability ~~with mental retardation~~ cannot
 582 adequately act in his or her own interest, the attorney may seek
 583 the appointment of a guardian ad litem. A prior finding of
 584 incompetency is not required before a guardian ad litem is
 585 appointed pursuant to this section.

586 (7) HEARING.—

587 (d) The person who has the intellectual disability must
 588 ~~with mental retardation shall~~ be physically present throughout
 589 the entire proceeding. If the person's attorney believes that
 590 the person's presence at the hearing is not in his or her the
 591 ~~person's~~ best interest, the person's presence may be waived once
 592 the court has seen the person and the hearing has commenced.

593 (8) ORDER.—

594 (b) An order of involuntary admission to residential
 595 services may not be entered unless the court finds that:

596 1. The person is intellectually disabled ~~mentally retarded~~
 597 or autistic;

598 2. Placement in a residential setting is the least
 599 restrictive and most appropriate alternative to meet the
 600 person's needs; and

601 3. Because of the person's degree of intellectual
 602 ~~disability mental retardation~~ or autism, the person:

603 a. Lacks sufficient capacity to give express and informed
 604 consent to a voluntary application for services pursuant to s.
 605 393.065 and lacks basic survival and self-care skills to such a
 606 degree that close supervision and habilitation in a residential
 607 setting is necessary and, if not provided, would result in a
 608 real and present threat of substantial harm to the person's
 609 well-being; or

591-03334-13 2013142c1

610 b. Is likely to physically injure others if allowed to
 611 remain at liberty.

612 (10) COMPETENCY.—

613 (a) The issue of competency ~~is shall be~~ separate and
 614 distinct from a determination of the appropriateness of
 615 involuntary admission to residential services due to
 616 intellectual disability ~~for a condition of mental retardation~~.

617 (b) The issue of the competency of a person who has an
 618 intellectual disability ~~with mental retardation~~ for purposes of
 619 assigning guardianship shall be determined in a separate
 620 proceeding according to the procedures and requirements of
 621 chapter 744. The issue of the competency of a person who has an
 622 intellectual disability ~~with mental retardation~~ or autism for
 623 purposes of determining whether the person is competent to
 624 proceed in a criminal trial shall be determined in accordance
 625 with chapter 916.

626 (12) APPEAL.—

627 (b) The filing of an appeal by the person who has an
 628 intellectual disability stays ~~with mental retardation shall stay~~
 629 admission of the person into residential care. The stay remains
 630 ~~shall remain~~ in effect during the pendency of all review
 631 proceedings in Florida courts until a mandate issues.

632 Section 11. Subsection (18) of section 394.455, Florida
 633 Statutes, is amended to read:

634 394.455 Definitions.—As used in this part, unless the
 635 context clearly requires otherwise, the term:

636 (18) "Mental illness" means an impairment of the mental or
 637 emotional processes that exercise conscious control of one's
 638 actions or of the ability to perceive or understand reality,

591-03334-13 2013142c1

639 which impairment substantially interferes with the a person's
 640 ability to meet the ordinary demands of living, ~~regardless of~~
 641 ~~etiology~~. For the purposes of this part, the term does not
 642 include a ~~retardation or~~ developmental disability as defined in
 643 chapter 393, intoxication, or conditions manifested only by
 644 antisocial behavior or substance abuse impairment.

645 Section 12. Subsections (3) through (13) of section
 646 400.960, Florida Statutes, are amended to read:

647 400.960 Definitions.—As used in this part, the term:

648 ~~(3) "Autism" has the same meaning as in s. 393.063.~~

649 ~~(4) "Cerebral palsy" has the same meaning as in s. 393.063.~~

650 (3)(5) "Client" means any person determined by the Agency
 651 for Persons with Disabilities to be eligible for developmental
 652 services.

653 (4)(6) "Developmentally disabled" ~~"developmental~~
 654 ~~disability"~~ has the same meaning as "developmental disability"
 655 as that term is defined in s. 393.063.

656 (5)(7) "Direct service provider" means a person 18 years of
 657 age or older who has direct contact with individuals who have
 658 ~~with~~ developmental disabilities and who is unrelated to such the
 659 individuals ~~with developmental disabilities~~.

660 (6)(8) "Intermediate care facility for the developmentally
 661 disabled" means a residential facility licensed and certified in
 662 accordance with state law, and certified by the Federal
 663 Government, pursuant to the Social Security Act, as a provider
 664 of Medicaid services to persons who have ~~with~~ developmental
 665 disabilities.

666 ~~(9) "Prader Willi syndrome" has the same meaning as in s.~~
 667 ~~393.063.~~

591-03334-13 2013142c1

668 ~~(7)(10)(a)~~ "Restraint" means a physical device, method, or
 669 drug used to control behavior.

670 (a) A physical restraint is any manual method or physical
 671 or mechanical device, material, or equipment attached or
 672 adjacent to the individual's body so that he or she cannot
 673 easily remove the restraint and which restricts freedom of
 674 movement or normal access to one's body.

675 (b) A drug used as a restraint is a medication used to
 676 control the person's behavior or to restrict his or her freedom
 677 of movement. Physically holding a person during a procedure to
 678 forcibly administer psychotropic medication is a physical
 679 restraint.

680 (c) Restraint does not include physical devices, such as
 681 orthopedically prescribed appliances, surgical dressings and
 682 bandages, supportive body bands, or other physical holding ~~when~~
 683 necessary for routine physical examinations and tests; for
 684 purposes of orthopedic, surgical, or other similar medical
 685 treatment; ~~when used~~ to provide support for the achievement of
 686 functional body position or proper balance; or ~~when used~~ to
 687 protect a person from falling out of bed.

688 ~~(11) "Retardation" has the same meaning as in s. 393.063.~~

689 (8)(12) "Seclusion" means the physical segregation of a
 690 person in any fashion or the involuntary isolation of a person
 691 in a room or area from which the person is prevented from
 692 leaving. The prevention may be by physical barrier or by a staff
 693 member who is acting in a manner, or who is physically situated,
 694 so as to prevent the person from leaving the room or area. For
 695 purposes of this part, the term does not mean isolation due to a
 696 person's medical condition or symptoms.

591-03334-13

2013142c1

697 ~~(13) "Spina bifida" has the same meaning as in s. 393.063.~~
 698 Section 13. Subsection (12) of section 408.032, Florida
 699 Statutes, is amended to read:

700 408.032 Definitions relating to Health Facility and
 701 Services Development Act.—As used in ss. 408.031-408.045, the
 702 term:

703 (12) "Intermediate care facility for the developmentally
 704 disabled" means a residential facility licensed under part VIII
 705 of chapter 400 ~~chapter 393 and certified by the Federal~~
 706 ~~Government pursuant to the Social Security Act as a provider of~~
 707 ~~Medicaid services to persons who are mentally retarded or who~~
 708 ~~have a related condition.~~

709 Section 14. Subsection (8) of section 409.908, Florida
 710 Statutes, is amended to read:

711 409.908 Reimbursement of Medicaid providers.—Subject to
 712 specific appropriations, the agency shall reimburse Medicaid
 713 providers, in accordance with state and federal law, according
 714 to methodologies set forth in the rules of the agency and in
 715 policy manuals and handbooks incorporated by reference therein.
 716 These methodologies may include fee schedules, reimbursement
 717 methods based on cost reporting, negotiated fees, competitive
 718 bidding pursuant to s. 287.057, and other mechanisms the agency
 719 considers efficient and effective for purchasing services or
 720 goods on behalf of recipients. If a provider is reimbursed based
 721 on cost reporting and submits a cost report late and that cost
 722 report would have been used to set a lower reimbursement rate
 723 for a rate semester, then the provider's rate for that semester
 724 shall be retroactively calculated using the new cost report, and
 725 full payment at the recalculated rate shall be effected

591-03334-13

2013142c1

726 retroactively. Medicare-granted extensions for filing cost
 727 reports, if applicable, shall also apply to Medicaid cost
 728 reports. Payment for Medicaid compensable services made on
 729 behalf of Medicaid eligible persons is subject to the
 730 availability of moneys and any limitations or directions
 731 provided for in the General Appropriations Act or chapter 216.
 732 Further, nothing in this section shall be construed to prevent
 733 or limit the agency from adjusting fees, reimbursement rates,
 734 lengths of stay, number of visits, or number of services, or
 735 making any other adjustments necessary to comply with the
 736 availability of moneys and any limitations or directions
 737 provided for in the General Appropriations Act, provided the
 738 adjustment is consistent with legislative intent.

739 (8) A provider of home-based or community-based services
 740 rendered pursuant to a federally approved waiver shall be
 741 reimbursed based on an established or negotiated rate for each
 742 service. These rates shall be established according to an
 743 analysis of the expenditure history and prospective budget
 744 developed by each contract provider participating in the waiver
 745 program, or under any other methodology adopted by the agency
 746 and approved by the Federal Government in accordance with the
 747 waiver. Privately owned and operated community-based residential
 748 facilities which meet agency requirements and which formerly
 749 received Medicaid reimbursement for the optional intermediate
 750 care facility for the intellectually disabled ~~mentally retarded~~
 751 service may participate in the developmental services waiver as
 752 part of a home-and-community-based continuum of care for
 753 Medicaid recipients who receive waiver services.

754 Section 15. Subsection (16) of section 413.20, Florida

591-03334-13

2013142c1

755 Statutes, is amended to read:

756 413.20 Definitions.—As used in this part, the term:

757 (16) "Person who has a significant disability" means an
 758 individual who has a disability that is a severe physical or
 759 mental impairment that seriously limits one or more functional
 760 capacities, such as mobility, communication, self-care, self-
 761 direction, interpersonal skills, work tolerance, or work skills,
 762 in terms of an employment outcome; whose vocational
 763 rehabilitation may be expected to require multiple vocational
 764 rehabilitation services over an extended period of time; and who
 765 has one or more physical or mental disabilities resulting from
 766 amputation, arthritis, autism, blindness, burn injury, cancer,
 767 cerebral palsy, cystic fibrosis, deafness, head injury, heart
 768 disease, hemiplegia, hemophilia, respiratory or pulmonary
 769 dysfunction, intellectual disability ~~mental retardation~~, mental
 770 illness, multiple sclerosis, muscular dystrophy, musculoskeletal
 771 disorder, neurological disorder, including stroke and epilepsy,
 772 paraplegia, quadriplegia, or other spinal cord condition,
 773 sickle-cell anemia, specific learning disability, end-stage
 774 renal disease, or another disability or a combination of
 775 disabilities that is determined, after an assessment for
 776 determining eligibility and vocational rehabilitation needs, to
 777 cause comparable substantial functional limitation.

778 Section 16. Paragraph (a) of subsection (6) of section
 779 440.49, Florida Statutes, is amended to read:

780 440.49 Limitation of liability for subsequent injury
 781 through Special Disability Trust Fund.—

782 (6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.—

783 (a) Reimbursement is not allowed under this section unless

591-03334-13

2013142c1

784 it is established that the employer knew of the preexisting
 785 permanent physical impairment prior to the occurrence of the
 786 subsequent injury or occupational disease, and ~~that~~ the
 787 permanent physical impairment is one of the following:

- 788 1. Epilepsy.
- 789 2. Diabetes.
- 790 3. Cardiac disease.
- 791 4. Amputation of foot, leg, arm, or hand.
- 792 5. Total loss of sight of one or both eyes or a partial
 793 loss of corrected vision of more than 75 percent bilaterally.
- 794 6. Residual disability from poliomyelitis.
- 795 7. Cerebral palsy.
- 796 8. Multiple sclerosis.
- 797 9. Parkinson's disease.
- 798 10. Meniscectomy.
- 799 11. Patellectomy.
- 800 12. Ruptured cruciate ligament.
- 801 13. Hemophilia.
- 802 14. Chronic osteomyelitis.
- 803 15. Surgical or spontaneous fusion of a major weight-
 804 bearing joint.
- 805 16. Hyperinsulinism.
- 806 17. Muscular dystrophy.
- 807 18. Thrombophlebitis.
- 808 19. Herniated intervertebral disk.
- 809 20. Surgical removal of an intervertebral disk or spinal
 810 fusion.
- 811 21. One or more back injuries or a disease process of the
 812 back resulting in disability over a total of 120 or more days,

591-03334-13

2013142c1

813 if substantiated by a doctor's opinion that there was a
814 preexisting impairment to the claimant's back.

815 22. Total deafness.

816 23. Intellectual disability if ~~Mental retardation, provided~~
817 the employee's intelligence quotient is such that she or he
818 falls within the lowest 2 percentile of the general population.
819 However, ~~it shall not be necessary for~~ the employer does not
820 need to know the employee's actual intelligence quotient or
821 actual relative ranking in relation to the intelligence quotient
822 of the general population.

823 24. Any permanent physical condition that ~~which~~, prior to
824 the industrial accident or occupational disease, constitutes a
825 20 percent ~~20 percent~~ impairment of a member or of the body as a
826 whole.

827 25. Obesity if, ~~provided~~ the employee is 30 percent or more
828 over the average weight designated for her or his height and age
829 in the Table of Average Weight of Americans by Height and Age
830 prepared by the Society of Actuaries using data from the 1979
831 Build and Blood Pressure Study.

832 26. Any permanent physical impairment as provided ~~defined~~
833 in s. 440.15(3) which is a result of a prior industrial accident
834 with the same employer or the employer's parent company,
835 subsidiary, sister company, or affiliate located within the
836 geographical boundaries of this state.

837 Section 17. Paragraph (g) of subsection (1) of section
838 499.0054, Florida Statutes, is amended to read:

839 499.0054 Advertising and labeling of drugs, devices, and
840 cosmetics; exemptions.-

841 (1) It is a violation of the Florida Drug and Cosmetic Act

591-03334-13

2013142c1

842 to perform or cause the performance of any of the following
843 acts:

- 844 (g) The advertising of any drug or device represented to
845 have any effect in any of the following conditions, disorders,
846 diseases, or processes:
- 847 1. Blood disorders.
 - 848 2. Bone or joint diseases.
 - 849 3. Kidney diseases or disorders.
 - 850 4. Cancer.
 - 851 5. Diabetes.
 - 852 6. Gall bladder diseases or disorders.
 - 853 7. Heart and vascular diseases.
 - 854 8. High blood pressure.
 - 855 9. Diseases or disorders of the ear or auditory apparatus,
856 including hearing loss or deafness.
 - 857 10. Mental disease or intellectual disability ~~mental~~
858 ~~retardation~~.
 - 859 11. Paralysis.
 - 860 12. Prostate gland disorders.
 - 861 13. Conditions of the scalp affecting hair loss.
 - 862 14. Baldness.
 - 863 15. Endocrine disorders.
 - 864 16. Sexual impotence.
 - 865 17. Tumors.
 - 866 18. Venereal diseases.
 - 867 19. Varicose ulcers.
 - 868 20. Breast enlargement.
 - 869 21. Purifying blood.
 - 870 22. Metabolic disorders.

591-03334-13

2013142c1

871 23. Immune system disorders or conditions affecting the
872 immune system.

873 24. Extension of life expectancy.

874 25. Stress and tension.

875 26. Brain stimulation or performance.

876 27. The body's natural defense mechanisms.

877 28. Blood flow.

878 29. Depression.

879 30. Human immunodeficiency virus or acquired immune
880 deficiency syndrome or related disorders or conditions.

881 Section 18. Section 514.072, Florida Statutes, is amended
882 to read:

883 514.072 Certification of swimming instructors for people
884 who have developmental disabilities ~~required~~.—Any person working
885 at a swimming pool who holds himself or herself out as a
886 swimming instructor specializing in training people who have
887 developmental disabilities, as defined in s. 393.063~~(4)~~, may be
888 certified by the Dan Marino Foundation, Inc., in addition to
889 being certified under s. 514.071. The Dan Marino Foundation,
890 Inc., must develop certification requirements and a training
891 curriculum for swimming instructors for people who have
892 developmental disabilities ~~and must submit the certification~~
893 ~~requirements to the Department of Health for review by January~~
894 ~~1, 2007. A person certified under s. 514.071 before July 1,~~
895 ~~2007, must meet the additional certification requirements of~~
896 ~~this section before January 1, 2008.~~ A person certified under s.
897 514.071 ~~on or after July 1, 2007,~~ must meet the additional
898 certification requirements of this section within 6 months after
899 receiving certification under s. 514.071.

Page 31 of 69

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

591-03334-13

2013142c1

900 Section 19. Section 627.6041, Florida Statutes, is amended
901 to read:

902 627.6041 ~~Handicapped~~ Children with disabilities;
903 continuation of coverage.—

904 (1) A hospital or medical expense insurance policy or
905 health care services plan contract that is delivered or issued
906 for delivery in this state and that provides that coverage of a
907 dependent child ~~terminates~~ will terminate upon attainment of the
908 limiting age for dependent children specified in the policy or
909 contract ~~must~~ shall also provide in substance that attainment of
910 the limiting age does not terminate the coverage of the child
911 while the child continues to be both:

912 (a) ~~(1)~~ Incapable of self-sustaining employment by reason of
913 an intellectual ~~mental retardation~~ or physical disability.
914 ~~handicap; and~~

915 (b) ~~(2)~~ Chiefly dependent upon the policyholder or
916 subscriber for support and maintenance.

917 (2) If a claim is denied under a policy or contract for the
918 stated reason that the child has attained the limiting age for
919 dependent children specified in the policy or contract, the
920 notice of denial must state that the policyholder has the burden
921 of establishing that the child continues to meet the criteria
922 specified in subsection ~~subsections~~ (1) ~~and (2)~~.

923 Section 20. Section 627.6615, Florida Statutes, is amended
924 to read:

925 627.6615 ~~Handicapped~~ Children with disabilities;
926 continuation of coverage under group policy.—

927 (1) A group health insurance policy or health care services
928 plan contract that is delivered or issued for delivery in this

Page 32 of 69

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

591-03334-13 2013142c1

929 state and that provides that coverage of a dependent child of an
 930 employee or other member of the covered group terminates will
 931 ~~terminate~~ upon attainment of the limiting age for dependent
 932 children specified in the policy or contract must shall also
 933 provide in substance that attainment of the limiting age does
 934 not terminate the coverage of the child while the child
 935 continues to be both:

936 (a)(1) Incapable of self-sustaining employment by reason of
 937 an intellectual mental retardation or physical disability.
 938 ~~handicap, and~~

939 (b)(2) Chiefly dependent upon the employee or member for
 940 support and maintenance.

941 (2) If a claim is denied under a policy or contract for the
 942 stated reason that the child has attained the limiting age for
 943 dependent children specified in the policy or contract, the
 944 notice of denial must state that the certificateholder or
 945 subscriber has the burden of establishing that the child
 946 continues to meet the criteria specified in subsection
 947 ~~subsections (1) and (2).~~

948 Section 21. Subsection (29) of section 641.31, Florida
 949 Statutes, is amended to read:

950 641.31 Health maintenance contracts.—

951 (29) If a health maintenance contract provides that
 952 coverage of a dependent child of the subscriber terminates will
 953 ~~terminate~~ upon attainment of the limiting age for dependent
 954 children which is specified in the contract, the contract must
 955 also provide in substance that attainment of the limiting age
 956 does not terminate the coverage of the child while the child
 957 continues to be both:

591-03334-13 2013142c1

958 (a) Incapable of self-sustaining employment by reason of an
 959 intellectual mental retardation or physical disability.
 960 ~~handicap, and~~

961 (b) Chiefly dependent upon the employee or member for
 962 support and maintenance.

963
 964 If the claim is denied under a contract for the stated reason
 965 that the child has attained the limiting age for dependent
 966 children specified in the contract, the notice or denial must
 967 state that the subscriber has the burden of establishing that
 968 the child continues to meet the criteria specified in this
 969 subsection paragraphs (a) and (b).

970 Section 22. Subsection (4) of section 650.05, Florida
 971 Statutes, is amended to read:

972 650.05 Plans for coverage of employees of political
 973 subdivisions.—

974 (4)(a) Notwithstanding any other provision of this chapter,
 975 effective January 1, 1972, all state political subdivisions
 976 receiving financial aid which that provide social security
 977 coverage for their employees pursuant to ~~the provisions of~~ this
 978 chapter and the ~~provisions of the~~ various retirement systems as
 979 authorized by law shall, in addition to other purposes, use
 980 ~~utilize~~ all grants-in-aid and other revenue received from the
 981 state to pay the employer's share of social security cost.

982 ~~(b)~~ The grants-in-aid and other revenue ~~referred to in~~
 983 ~~paragraph (a)~~ specifically include, but are not limited to,
 984 minimum foundation program grants to public school districts and
 985 community colleges; gasoline, motor fuel, cigarette, racing, and
 986 insurance premium taxes distributed to political subdivisions;

591-03334-13 2013142c1

987 and amounts specifically appropriated as grants-in-aid for
 988 mental health, intellectual disabilities ~~mental retardation~~, and
 989 mosquito control programs.

990 Section 23. Subsection (1) of section 765.204, Florida
 991 Statutes, is amended to read:

992 765.204 Capacity of principal; procedure.—

993 (1) A principal is presumed to be capable of making health
 994 care decisions for herself or himself unless she or he is
 995 determined to be incapacitated. Incapacity may not be inferred
 996 from the person's voluntary or involuntary hospitalization for
 997 mental illness or from her or his intellectual disability ~~mental~~
 998 ~~retardation~~.

999 Section 24. Section 849.04, Florida Statutes, is amended to
 1000 read:

1001 849.04 Permitting minors and persons under guardianship to
 1002 gamble. ~~Whoever being~~ The proprietor, owner, or keeper of any E.
 1003 O., keno or pool table, or billiard table, wheel of fortune, or
 1004 other game of chance, who kept for the purpose of betting, who
 1005 willfully and knowingly allows a ~~any~~ minor or ~~any~~ person who is
 1006 mentally incompetent or under guardianship to play at such game
 1007 or to bet on such game of chance, or whoever aids or abets or
 1008 otherwise encourages such playing or betting of any money or
 1009 other valuable thing upon the result of such game of chance by a
 1010 ~~any~~ minor or ~~any~~ person who is mentally incompetent or under
 1011 guardianship, commits ~~shall be guilty of~~ a felony of the third
 1012 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1013 775.084. For the purpose of this section, the term a "person who
 1014 is mentally incompetent ~~person"~~ means a person is one who
 1015 because of mental illness, intellectual disability ~~mental~~

591-03334-13 2013142c1

1016 ~~retardation~~, senility, excessive use of drugs or alcohol, or
 1017 other mental incapacity is incapable of ~~either~~ managing his or
 1018 her property or caring for himself or herself or both.

1019 Section 25. Section 914.16, Florida Statutes, is amended to
 1020 read:

1021 914.16 Child abuse and sexual abuse of victims under age 16
 1022 or who have an intellectual disability ~~persons with mental~~
 1023 ~~retardation~~; limits on interviews.—The chief judge of each
 1024 judicial circuit, after consultation with the state attorney and
 1025 the public defender for the judicial circuit, the appropriate
 1026 chief law enforcement officer, and any other person deemed
 1027 appropriate by the chief judge, shall ~~provide by order~~
 1028 reasonable limits on the number of interviews which ~~that~~ a
 1029 victim of a violation of s. 794.011, s. 800.04, s. 827.03, or s.
 1030 847.0135(5) who is under 16 years of age or a victim of a
 1031 violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102 who
 1032 has an intellectual disability ~~is a person with mental~~
 1033 ~~retardation~~ as defined in s. 393.063 must submit to for law
 1034 enforcement or discovery purposes. ~~The order shall,~~ To the
 1035 extent possible, the order must protect the victim from the
 1036 psychological damage of repeated interrogations while preserving
 1037 the rights of the public, the victim, and the person charged
 1038 with the violation.

1039 Section 26. Section 914.17, Florida Statutes, is amended to
 1040 read:

1041 914.17 Appointment of advocate for victims or witnesses who
 1042 are minors or intellectually disabled ~~persons with mental~~
 1043 ~~retardation~~.—

1044 (1) A guardian ad litem or other advocate shall be

591-03334-13 2013142c1

1045 appointed by the court to represent a minor in any criminal
 1046 proceeding if the minor is a victim of or witness to child abuse
 1047 or neglect, ~~or if the minor is~~ a victim of a sexual offense, or
 1048 a witness to a sexual offense committed against another minor.
 1049 The court may appoint a guardian ad litem or other advocate in
 1050 any other criminal proceeding in which a minor is involved as
 1051 ~~either~~ a victim or a witness. The guardian ad litem or other
 1052 advocate shall have full access to all evidence and reports
 1053 introduced during the proceedings, may interview witnesses, may
 1054 make recommendations to the court, shall be noticed and have the
 1055 right to appear on behalf of the minor at all proceedings, and
 1056 may request additional examinations by medical doctors,
 1057 psychiatrists, or psychologists. ~~It is the duty of~~ The guardian
 1058 ad litem or other advocate shall to perform the following
 1059 ~~services:~~

- 1060 (a) ~~To~~ Explain, in language understandable to the minor,
 1061 all legal proceedings in which the minor is ~~shall be~~ involved;
 1062 (b) ~~To~~ Act, as a friend of the court, to advise the judge,
 1063 whenever appropriate, of the minor's ability to understand and
 1064 cooperate with any court proceeding; and
 1065 (c) ~~To~~ Assist the minor and the minor's family in coping
 1066 with the emotional effects of the crime and subsequent criminal
 1067 proceedings in which the minor is involved.
- 1068 (2) An advocate shall be appointed by the court to
 1069 represent a person who has an intellectual disability with
 1070 ~~mental retardation~~ as defined in s. 393.063 in any criminal
 1071 proceeding if the person ~~with mental retardation~~ is a victim of
 1072 or witness to abuse or neglect, ~~or if the person with mental~~
 1073 ~~retardation is~~ a victim of a sexual offense, or a witness to a

591-03334-13 2013142c1

1074 sexual offense committed against a minor or person who has an
 1075 intellectual disability ~~with mental retardation~~. The court may
 1076 appoint an advocate in any other criminal proceeding in which
 1077 ~~such a person with mental retardation~~ is involved as ~~either~~ a
 1078 victim or a witness. The advocate shall have full access to all
 1079 evidence and reports introduced during the proceedings, may
 1080 interview witnesses, may make recommendations to the court,
 1081 shall be noticed and have the right to appear on behalf of the
 1082 person ~~with mental retardation~~ at all proceedings, and may
 1083 request additional examinations by medical doctors,
 1084 psychiatrists, or psychologists. ~~It is the duty of~~ The advocate
 1085 shall to perform the following services:

- 1086 (a) ~~To~~ Explain, in language understandable to the person
 1087 ~~with mental retardation~~, all legal proceedings in which the
 1088 person is ~~shall be~~ involved;
 1089 (b) ~~To~~ Act, as a friend of the court, to advise the judge,
 1090 whenever appropriate, of the person's ~~person with mental~~
 1091 ~~retardation's~~ ability to understand and cooperate with any court
 1092 proceedings; and
 1093 (c) ~~To~~ Assist the person ~~with mental retardation~~ and the
 1094 person's family in coping with the emotional effects of the
 1095 crime and subsequent criminal proceedings in which the person
 1096 ~~with mental retardation~~ is involved.
- 1097 (3) Any person participating in a judicial proceeding as a
 1098 guardian ad litem or other advocate is ~~shall be~~ presumed prima
 1099 facie to be acting in good faith and in so doing is ~~shall be~~
 1100 immune from any liability, civil or criminal, which that
 1101 ~~otherwise~~ might be incurred or imposed.
- 1102 Section 27. Subsections (1), (2), and (3) of section

591-03334-13

2013142c1

1103 916.105, Florida Statutes, are amended to read:

1104 916.105 Legislative intent.—

1105 (1) It is the intent of the Legislature that the Department
1106 of Children and Family Services and the Agency for Persons with
1107 Disabilities, as appropriate, establish, locate, and maintain
1108 separate and secure forensic facilities and programs for the
1109 treatment or training of defendants who have been charged with a
1110 felony and who have been found to be incompetent to proceed due
1111 to their mental illness, intellectual disability ~~mental~~
1112 ~~retardation~~, or autism, or who have been acquitted of a felony
1113 by reason of insanity, and who, while still under the
1114 jurisdiction of the committing court, are committed to the
1115 department or agency under ~~the provisions of~~ this chapter. Such
1116 facilities must ~~shall~~ be sufficient to accommodate the number of
1117 defendants committed under the conditions noted above. Except
1118 for those defendants found by the department or agency to be
1119 appropriate for treatment or training in a civil facility or
1120 program pursuant to subsection (3), forensic facilities must
1121 ~~shall~~ be designed and administered so that ingress and egress,
1122 together with other requirements of this chapter, may be
1123 strictly controlled by staff responsible for security in order
1124 to protect the defendant, facility personnel, other clients, and
1125 citizens in adjacent communities.

1126 (2) It is the intent of the Legislature that treatment or
1127 training programs for defendants who are found to have mental
1128 illness, intellectual disability ~~mental retardation~~, or autism
1129 and are involuntarily committed to the department or agency, and
1130 who are still under the jurisdiction of the committing court, be
1131 provided in a manner, subject to security requirements and other

Page 39 of 69

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

591-03334-13

2013142c1

1132 mandates of this chapter, which ensures ~~as to ensure~~ the rights
1133 of the defendants as provided in this chapter.

1134 (3) It is the intent of the Legislature that evaluation and
1135 services to defendants who have mental illness, intellectual
1136 disability ~~mental retardation~~, or autism be provided in
1137 community settings, in community residential facilities, or in
1138 civil facilities, whenever this is a feasible alternative to
1139 treatment or training in a state forensic facility.

1140 Section 28. Subsections (1), (10), (11), (12), and (17) of
1141 section 916.106, Florida Statutes, are amended, and subsections
1142 (13) through (15) of that section are reordered and amended, to
1143 read:

1144 916.106 Definitions.—For the purposes of this chapter, the
1145 term:

1146 (1) "Agency" means the Agency for Persons with
1147 Disabilities. The agency is responsible for training forensic
1148 clients who are developmentally disabled due to intellectual
1149 disability ~~mental retardation~~ or autism and have been determined
1150 incompetent to proceed.

1151 (10) "Forensic facility" means a separate and secure
1152 facility established within the department or agency to serve
1153 forensic clients. A separate and secure facility means a
1154 security-grade building for the purpose of separately housing
1155 persons who have mental illness from persons who have
1156 intellectual disabilities ~~with retardation~~ or autism and
1157 separately housing persons who have been involuntarily committed
1158 pursuant to this chapter from nonforensic residents.

1159 (11) "Incompetent to proceed" means unable to proceed at
1160 any material stage of a criminal proceeding, which includes the

Page 40 of 69

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

591-03334-13 2013142c1

1161 ~~shall include~~ trial of the case, pretrial hearings involving
 1162 questions of fact on which the defendant might be expected to
 1163 testify, entry of a plea, proceedings for violation of probation
 1164 or violation of community control, sentencing, and hearings on
 1165 issues regarding a defendant's failure to comply with court
 1166 orders or conditions or other matters in which the mental
 1167 competence of the defendant is necessary for a just resolution
 1168 of the issues being considered.

1169 (12) "Institutional security personnel" means the staff of
 1170 forensic facilities who meet or exceed the requirements of s.
 1171 943.13 and who are responsible for providing security,
 1172 protecting clients and personnel, enforcing rules, preventing
 1173 and investigating unauthorized activities, and safeguarding the
 1174 interests of residents ~~citizens~~ in the surrounding communities.

1175 (14) ~~(13)~~ "Mental illness" means an impairment of the
 1176 emotional processes that exercise conscious control of one's
 1177 actions, or of the ability to perceive or understand reality,
 1178 which impairment substantially interferes with the ~~a~~ defendant's
 1179 ability to meet the ordinary demands of living. For the purposes
 1180 of this chapter, the term does not apply to defendants who have
 1181 only an intellectual disability ~~with only mental retardation~~ or
 1182 autism and does not include intoxication or conditions
 1183 manifested only by antisocial behavior or substance abuse
 1184 impairment.

1185 (15) ~~(14)~~ "Restraint" means a physical device, method, or
 1186 drug used to control dangerous behavior.

1187 (a) A physical restraint is any manual method or physical
 1188 or mechanical device, material, or equipment attached or
 1189 adjacent to a person's body so that he or she cannot easily

Page 41 of 69

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

591-03334-13 2013142c1

1190 remove the restraint and that restricts freedom of movement or
 1191 normal access to one's body.

1192 (b) A drug used as a restraint is a medication used to
 1193 control the person's behavior or to restrict his or her freedom
 1194 of movement and not part of the standard treatment regimen of
 1195 the person with a diagnosed mental illness who is a client of
 1196 the department. Physically holding a person during a procedure
 1197 to forcibly administer psychotropic medication is a physical
 1198 restraint.

1199 (c) Restraint does not include physical devices, such as
 1200 orthopedically prescribed appliances, surgical dressings and
 1201 bandages, supportive body bands, or other physical holding ~~when~~
 1202 necessary for routine physical examinations and tests; for
 1203 purposes of orthopedic, surgical, or other similar medical
 1204 treatment; ~~when used~~ to provide support for the achievement of
 1205 functional body position or proper balance; or ~~when used~~ to
 1206 protect a person from falling out of bed.

1207 (13) ~~(15)~~ "Intellectual disability" ~~"Retardation"~~ has the
 1208 same meaning as in s. 393.063.

1209 (17) "Social service professional" means a person whose
 1210 minimum qualifications include a bachelor's degree and at least
 1211 2 years of social work, clinical practice, special education,
 1212 habilitation, or equivalent experience working directly with
 1213 persons who have intellectual disabilities ~~with retardation~~,
 1214 autism, or other developmental disabilities.

1215 Section 29. Paragraph (a) of subsection (1) and paragraph
 1216 (a) of subsection (3) of section 916.107, Florida Statutes, are
 1217 amended to read:

1218 916.107 Rights of forensic clients.-

Page 42 of 69

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

591-03334-13

2013142c1

1219 (1) RIGHT TO INDIVIDUAL DIGNITY.—

1220 (a) The policy of the state is that the individual dignity
 1221 of the client shall be respected at all times and upon all
 1222 occasions, including any occasion when the forensic client is
 1223 detained, transported, or treated. Clients with mental illness,
 1224 intellectual disability ~~retardation~~, or autism and who are
 1225 charged with committing felonies shall receive appropriate
 1226 treatment or training. In a criminal case involving a client who
 1227 has been adjudicated incompetent to proceed or not guilty by
 1228 reason of insanity, a jail may be used as an emergency facility
 1229 for up to 15 days following the date the department or agency
 1230 receives a completed copy of the court commitment order
 1231 containing all documentation required by the applicable Florida
 1232 Rules of Criminal Procedure. For a forensic client who is held
 1233 in a jail awaiting admission to a facility of the department or
 1234 agency, evaluation and treatment or training may be provided in
 1235 the jail by the local community mental health provider for
 1236 mental health services, by the developmental disabilities
 1237 program for persons with intellectual disability ~~retardation~~ or
 1238 autism, the client's physician or psychologist, or any other
 1239 appropriate program until the client is transferred to a civil
 1240 or forensic facility.

1241 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

1242 (a) A forensic client shall be asked to give express and
 1243 informed written consent for treatment. If a client refuses such
 1244 treatment as is deemed necessary and essential by the client's
 1245 multidisciplinary treatment team for the appropriate care of the
 1246 client, such treatment may be provided under the following
 1247 circumstances:

Page 43 of 69

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

591-03334-13

2013142c1

1248 1. In an emergency situation in which there is immediate
 1249 danger to the safety of the client or others, such treatment may
 1250 be provided upon the written order of a physician for a period
 1251 not to exceed 48 hours, excluding weekends and legal holidays.
 1252 If, after the 48-hour period, the client has not given express
 1253 and informed consent to the treatment initially refused, the
 1254 administrator or designee of the civil or forensic facility
 1255 shall, within 48 hours, excluding weekends and legal holidays,
 1256 petition the committing court or the circuit court serving the
 1257 county in which the facility is located, at the option of the
 1258 facility administrator or designee, for an order authorizing the
 1259 continued treatment of the client. In the interim, the need for
 1260 treatment shall be reviewed every 48 hours and may be continued
 1261 without the consent of the client upon the continued written
 1262 order of a physician who has determined that the emergency
 1263 situation continues to present a danger to the safety of the
 1264 client or others.

1265 2. In a situation other than an emergency situation, the
 1266 administrator or designee of the facility shall petition the
 1267 court for an order authorizing necessary and essential treatment
 1268 for the client. The order shall allow such treatment for a
 1269 period not to exceed 90 days following the date of the entry of
 1270 the order. Unless the court is notified in writing that the
 1271 client has provided express and informed consent in writing or
 1272 that the client has been discharged by the committing court, the
 1273 administrator or designee shall, before ~~prior to~~ the expiration
 1274 of the initial 90-day order, petition the court for an order
 1275 authorizing the continuation of treatment for another 90-day
 1276 period. This procedure shall be repeated until the client

Page 44 of 69

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

591-03334-13 2013142c1

1277 provides consent or is discharged by the committing court.

1278 3. At the hearing on the issue of whether the court should
 1279 enter an order authorizing treatment for which a client was
 1280 unable to or refused to give express and informed consent, the
 1281 court shall determine by clear and convincing evidence that the
 1282 client has mental illness, intellectual disability ~~retardation~~,
 1283 or autism, that the treatment not consented to is essential to
 1284 the care of the client, and that the treatment not consented to
 1285 is not experimental and does not present an unreasonable risk of
 1286 serious, hazardous, or irreversible side effects. In arriving at
 1287 the substitute judgment decision, the court must consider at
 1288 least the following factors:

- 1289 a. The client's expressed preference regarding treatment;
- 1290 b. The probability of adverse side effects;
- 1291 c. The prognosis without treatment; and
- 1292 d. The prognosis with treatment.

1293
 1294 The hearing shall be as convenient to the client as may be
 1295 consistent with orderly procedure and shall be conducted in
 1296 physical settings not likely to be injurious to the client's
 1297 condition. The court may appoint a general or special magistrate
 1298 to preside at the hearing. The client or the client's guardian,
 1299 and the representative, shall be provided with a copy of the
 1300 petition and the date, time, and location of the hearing. The
 1301 client has the right to have an attorney represent him or her at
 1302 the hearing, and, if the client is indigent, the court shall
 1303 appoint the office of the public defender to represent the
 1304 client at the hearing. The client may testify or not, as he or
 1305 she chooses, and has the right to cross-examine witnesses and

591-03334-13 2013142c1

1306 may present his or her own witnesses.

1307 Section 30. The Division of Law Revision and Information is
 1308 requested to rename part III of chapter 916, Florida Statutes,
 1309 consisting of ss. 916.301-916.304, as "Forensic Services for
 1310 Persons who are Intellectually Disabled or Autistic."

1311 Section 31. Subsections (1) and (2) of section 916.301,
 1312 Florida Statutes, are amended to read:

1313 916.301 Appointment of experts.—

1314 (1) All evaluations ordered by the court under this part
 1315 must be conducted by qualified experts who have expertise in
 1316 evaluating persons who have an intellectual disability ~~with~~
 1317 ~~retardation~~ or autism. The agency shall maintain and provide the
 1318 courts annually with a list of available ~~retardation and autism~~
 1319 professionals who are appropriately licensed and qualified to
 1320 perform evaluations of defendants alleged to be incompetent to
 1321 proceed due to intellectual disability ~~retardation~~ or autism.
 1322 The courts may use professionals from this list when appointing
 1323 experts and ordering evaluations under this part.

1324 (2) If a defendant's suspected mental condition is
 1325 intellectual disability ~~retardation~~ or autism, the court shall
 1326 appoint the following:

1327 (a) At least one, or at the request of any party, two
 1328 experts to evaluate whether the defendant meets the definition
 1329 of intellectual disability ~~retardation~~ or autism and, if so,
 1330 whether the defendant is competent to proceed; and

1331 (b) A psychologist selected by the agency who is licensed
 1332 or authorized by law to practice in this state, with experience
 1333 in evaluating persons suspected of having an intellectual
 1334 disability ~~retardation~~ or autism, and a social service

591-03334-13 2013142c1

1335 professional, with experience in working with persons who have
 1336 an intellectual disability ~~with retardation~~ or autism.

1337 1. The psychologist shall evaluate whether the defendant
 1338 meets the definition of intellectual disability ~~retardation~~ or
 1339 autism and, if so, whether the defendant is incompetent to
 1340 proceed due to intellectual disability ~~retardation~~ or autism.

1341 2. The social service professional shall provide a social
 1342 and developmental history of the defendant.

1343 Section 32. Subsections (1), (2), and (4) of section
 1344 916.3012, Florida Statutes, are amended to read:

1345 916.3012 Mental competence to proceed.—

1346 (1) A defendant whose suspected mental condition is
 1347 intellectual disability ~~retardation~~ or autism is incompetent to
 1348 proceed within the meaning of this chapter if the defendant does
 1349 not have sufficient present ability to consult with the
 1350 defendant's lawyer with a reasonable degree of rational
 1351 understanding or if the defendant has no rational, as well as
 1352 factual, understanding of the proceedings against the defendant.

1353 (2) Experts in intellectual disability ~~retardation~~ or
 1354 autism appointed pursuant to s. 916.301 shall first consider
 1355 whether the defendant meets the definition of intellectual
 1356 disability ~~retardation~~ or autism and, if so, consider the
 1357 factors related to the issue of whether the defendant meets the
 1358 criteria for competence to proceed as described in subsection
 1359 (1).

1360 (4) If the experts ~~should~~ find that the defendant is
 1361 incompetent to proceed, the experts shall report on any
 1362 recommended training for the defendant to attain competence to
 1363 proceed. In considering the issues relating to training, the

591-03334-13 2013142c1

1364 examining experts shall specifically report on:

1365 (a) The intellectual disability ~~retardation~~ or autism
 1366 causing the incompetence;

1367 (b) The training appropriate for the intellectual
 1368 disability ~~retardation~~ or autism of the defendant and an
 1369 explanation of each of the possible training alternatives in
 1370 order of choices;

1371 (c) The availability of acceptable training and, if
 1372 training is available in the community, the expert shall so
 1373 state in the report; and

1374 (d) The likelihood of the defendant's attaining competence
 1375 under the training recommended, an assessment of the probable
 1376 duration of the training required to restore competence, and the
 1377 probability that the defendant will attain competence to proceed
 1378 in the foreseeable future.

1379 Section 33. Subsection (1), paragraphs (a) and (b) of
 1380 subsection (2), and paragraph (a) of subsection (3) of section
 1381 916.302, Florida Statutes, are amended to read:

1382 916.302 Involuntary commitment of defendant determined to
 1383 be incompetent to proceed.—

1384 (1) CRITERIA.—Every defendant who is charged with a felony
 1385 and who is adjudicated incompetent to proceed due to
 1386 intellectual disability ~~retardation~~ or autism may be
 1387 involuntarily committed for training upon a finding by the court
 1388 of clear and convincing evidence that:

1389 (a) The defendant has an intellectual disability
 1390 ~~retardation~~ or autism;

1391 (b) There is a substantial likelihood that in the near
 1392 future the defendant will inflict serious bodily harm on himself

591-03334-13 2013142c1

1393 or herself or another person, as evidenced by recent behavior
 1394 causing, attempting, or threatening such harm;

1395 (c) All available, less restrictive alternatives, including
 1396 services provided in community residential facilities or other
 1397 community settings, which would offer an opportunity for
 1398 improvement of the condition have been judged to be
 1399 inappropriate; and

1400 (d) There is a substantial probability that the
 1401 intellectual disability ~~retardation~~ or autism causing the
 1402 defendant's incompetence will respond to training and the
 1403 defendant will regain competency to proceed in the reasonably
 1404 foreseeable future.

1405 (2) ADMISSION TO A FACILITY.—

1406 (a) A defendant who has been charged with a felony and who
 1407 is found to be incompetent to proceed due to intellectual
 1408 disability ~~retardation~~ or autism, and who meets the criteria for
 1409 involuntary commitment to the agency under ~~the provisions of~~
 1410 this chapter, shall be committed to the agency, and the agency
 1411 shall retain and provide appropriate training for the defendant.
 1412 Within ~~No later than~~ 6 months after the date of admission or at
 1413 the end of any period of extended commitment or at any time the
 1414 administrator or designee determines ~~shall have determined~~ that
 1415 the defendant has regained competency to proceed or no longer
 1416 meets the criteria for continued commitment, the administrator
 1417 or designee shall file a report with the court pursuant to this
 1418 chapter and the applicable Florida Rules of Criminal Procedure.

1419 (b) A defendant determined to be incompetent to proceed due
 1420 to intellectual disability ~~retardation~~ or autism may be ordered
 1421 by a circuit court into a forensic facility designated by the

591-03334-13 2013142c1

1422 agency for defendants who have an intellectual disability ~~mental~~
 1423 ~~retardation~~ or autism.

1424 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

1425 (a) If a defendant has both an intellectual disability
 1426 ~~mental retardation~~ or autism and ~~has~~ a mental illness,
 1427 evaluations must address which condition is primarily affecting
 1428 the defendant's competency to proceed. Referral of the defendant
 1429 should be made to a civil or forensic facility most appropriate
 1430 to address the symptoms that are the cause of the defendant's
 1431 incompetence.

1432 Section 34. Subsection (1) of section 916.3025, Florida
 1433 Statutes, is amended to read:

1434 916.3025 Jurisdiction of committing court.—

1435 (1) The committing court shall retain jurisdiction in the
 1436 case of any defendant found to be incompetent to proceed due to
 1437 intellectual disability ~~retardation~~ or autism and ordered into a
 1438 forensic facility designated by the agency for defendants who
 1439 have intellectual disabilities ~~mental retardation~~ or autism. A
 1440 defendant may not be released except by the order of the
 1441 committing court. An administrative hearing examiner does not
 1442 have jurisdiction to determine issues of continuing commitment
 1443 or release of any defendant involuntarily committed pursuant to
 1444 this chapter.

1445 Section 35. Section 916.303, Florida Statutes, is amended
 1446 to read:

1447 916.303 Determination of incompetency ~~due to retardation or~~
 1448 ~~autism~~; dismissal of charges.—

1449 (1) The charges against any defendant found to be
 1450 incompetent to proceed due to intellectual disability

591-03334-13 2013142c1

1451 ~~retardation~~ or autism shall be dismissed without prejudice to
 1452 the state if the defendant remains incompetent to proceed within
 1453 a reasonable time after such determination, not to exceed 2
 1454 years, unless the court in its order specifies its reasons for
 1455 believing that the defendant will become competent to proceed
 1456 within the foreseeable future and specifies the time within
 1457 which the defendant is expected to become competent to proceed.
 1458 The charges may be refiled by the state if the defendant is
 1459 declared competent to proceed in the future.

1460 (2) If the charges are dismissed and if the defendant is
 1461 considered to lack sufficient capacity to give express and
 1462 informed consent to a voluntary application for services and
 1463 lacks the basic survival and self-care skills to provide for his
 1464 or her well-being or is likely to physically injure himself or
 1465 herself or others if allowed to remain at liberty, the agency,
 1466 the state attorney, or the defendant's attorney shall apply to
 1467 the committing court to involuntarily admit the defendant to
 1468 residential services pursuant to s. 393.11.

1469 (3) If the defendant is considered to need involuntary
 1470 residential services for reasons described in subsection (2)
 1471 and, further, there is a substantial likelihood that the
 1472 defendant will injure another person or continues to present a
 1473 danger of escape, and all available less restrictive
 1474 alternatives, including services in community residential
 1475 facilities or other community settings, which would offer an
 1476 opportunity for improvement of the condition have been judged to
 1477 be inappropriate, the agency, the state attorney, or the
 1478 defendant's counsel may request the committing court to continue
 1479 the defendant's placement in a secure facility pursuant to this

591-03334-13 2013142c1

1480 part. Any placement so continued ~~under this subsection~~ must be
 1481 reviewed by the court at least annually at a hearing. The annual
 1482 review and hearing must ~~shall~~ determine whether the defendant
 1483 continues to meet the criteria described in this subsection and,
 1484 if so, whether the defendant still requires involuntary
 1485 placement in a secure facility and whether the defendant is
 1486 receiving adequate care, treatment, habilitation, and
 1487 rehabilitation, including psychotropic medication and behavioral
 1488 programming. Notice of the annual review and review hearing
 1489 shall be given to the state attorney and the defendant's
 1490 attorney. ~~In no instance may~~ A defendant's placement in a secure
 1491 facility may not exceed the maximum sentence for the crime for
 1492 which the defendant was charged.

1493 Section 36. Subsection (1) of section 916.304, Florida
 1494 Statutes, is amended to read:

1495 916.304 Conditional release.—

1496 (1) Except for an inmate currently serving a prison
 1497 sentence, the committing court may order a conditional release
 1498 of any defendant who has been found to be incompetent to proceed
 1499 due to intellectual disability ~~retardation~~ or autism, based on
 1500 an approved plan for providing community-based training. The
 1501 committing criminal court may order a conditional release of any
 1502 defendant to a civil facility in lieu of an involuntary
 1503 commitment to a forensic facility pursuant to s. 916.302. Upon a
 1504 recommendation that community-based training for the defendant
 1505 is appropriate, a written plan for community-based training,
 1506 including recommendations from qualified professionals, may be
 1507 filed with the court, with copies to all parties. Such a plan
 1508 may also be submitted by the defendant and filed with the court,

591-03334-13

2013142c1

1509 with copies to all parties. The plan must include:

1510 (a) Special provisions for residential care and adequate
1511 supervision of the defendant, including recommended location of
1512 placement.

1513 (b) Recommendations for auxiliary services such as
1514 vocational training, psychological training, educational
1515 services, leisure services, and special medical care.

1516

1517 In its order of conditional release, the court shall specify the
1518 conditions of release based upon the release plan and shall
1519 direct the appropriate agencies or persons to submit periodic
1520 reports to the courts regarding the defendant's compliance with
1521 the conditions of the release and progress in training, with
1522 copies to all parties.

1523 Section 37. Section 918.16, Florida Statutes, is amended to
1524 read:

1525 918.16 Sex offenses; testimony of person under age 16 or
1526 who has an intellectual disability ~~person with mental~~
1527 ~~retardation~~; testimony of victim; courtroom cleared;
1528 exceptions.—

1529 (1) Except as provided in subsection (2), in the trial of
1530 any case, civil or criminal, ~~if when~~ any person under the age of
1531 16 or any person with an intellectual disability ~~mental~~
1532 ~~retardation~~ as defined in s. 393.063 is testifying concerning
1533 any sex offense, the court shall clear the courtroom of all
1534 persons except parties to the cause and their immediate families
1535 or guardians, attorneys and their secretaries, officers of the
1536 court, jurors, newspaper reporters or broadcasters, court
1537 reporters, and, at the request of the victim, victim or witness

Page 53 of 69

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

591-03334-13

2013142c1

1538 advocates designated by the state attorney's office.

1539 (2) ~~If when~~ the victim of a sex offense is testifying
1540 concerning that offense in any civil or criminal trial, the
1541 court shall clear the courtroom of all persons upon the request
1542 of the victim, regardless of the victim's age or mental
1543 capacity, except that parties to the cause and their immediate
1544 families or guardians, attorneys and their secretaries, officers
1545 of the court, jurors, newspaper reporters or broadcasters, court
1546 reporters, and, at the request of the victim, victim or witness
1547 advocates designated by the state attorney may remain in the
1548 courtroom.

1549 Section 38. Section 921.137, Florida Statutes, is amended
1550 to read:

1551 921.137 Imposition of the death sentence upon an
1552 intellectually disabled ~~a~~ defendant ~~with mental retardation~~
1553 prohibited.—

1554 (1) As used in this section, the term "intellectually
1555 disabled" or "intellectual disability" ~~"mental retardation"~~
1556 means significantly subaverage general intellectual functioning
1557 existing concurrently with deficits in adaptive behavior and
1558 manifested during the period from conception to age 18. The term
1559 "significantly subaverage general intellectual functioning," for
1560 the purpose of this section, means performance that is two or
1561 more standard deviations from the mean score on a standardized
1562 intelligence test specified in the rules of the Agency for
1563 Persons with Disabilities. The term "adaptive behavior," for the
1564 purpose of this definition, means the effectiveness or degree
1565 with which an individual meets the standards of personal
1566 independence and social responsibility expected of his or her

Page 54 of 69

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

591-03334-13 2013142c1

1567 age, cultural group, and community. The Agency for Persons with
 1568 Disabilities shall adopt rules to specify the standardized
 1569 intelligence tests as provided in this subsection.

1570 (2) A sentence of death may not be imposed upon a defendant
 1571 convicted of a capital felony if it is determined in accordance
 1572 with this section that the defendant is intellectually disabled
 1573 ~~has mental retardation~~.

1574 (3) A defendant charged with a capital felony who intends
 1575 to raise intellectual disability ~~mental retardation~~ as a bar to
 1576 the death sentence must give notice of such intention in
 1577 accordance with the rules of court governing notices of intent
 1578 to offer expert testimony regarding mental health mitigation
 1579 during the penalty phase of a capital trial.

1580 (4) After a defendant who has given notice of his or her
 1581 intention to raise intellectual disability ~~mental retardation~~ as
 1582 a bar to the death sentence is convicted of a capital felony and
 1583 an advisory jury has returned a recommended sentence of death,
 1584 the defendant may file a motion to determine whether the
 1585 defendant is intellectually disabled ~~has mental retardation~~.
 1586 Upon receipt of the motion, the court shall appoint two experts
 1587 in the field of intellectual disabilities ~~mental retardation~~ who
 1588 shall evaluate the defendant and report their findings to the
 1589 court and all interested parties prior to the final sentencing
 1590 hearing. Notwithstanding s. 921.141 or s. 921.142, the final
 1591 sentencing hearing shall be held without a jury. At the final
 1592 sentencing hearing, the court shall consider the findings of the
 1593 court-appointed experts and consider the findings of any other
 1594 expert which is offered by the state or the defense on the issue
 1595 of whether the defendant has an intellectual disability ~~mental~~

Page 55 of 69

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

591-03334-13 2013142c1

1596 ~~retardation~~. If the court finds, by clear and convincing
 1597 evidence, that the defendant has an intellectual disability
 1598 ~~mental retardation~~ as defined in subsection (1), the court may
 1599 not impose a sentence of death and shall enter a written order
 1600 that sets forth with specificity the findings in support of the
 1601 determination.

1602 (5) If a defendant waives his or her right to a recommended
 1603 sentence by an advisory jury following a plea of guilt or nolo
 1604 contendere to a capital felony and adjudication of guilt by the
 1605 court, or following a jury finding of guilt of a capital felony,
 1606 upon acceptance of the waiver by the court, a defendant who has
 1607 given notice as required in subsection (3) may file a motion for
 1608 a determination of intellectual disability ~~mental retardation~~.
 1609 Upon granting the motion, the court shall proceed as provided in
 1610 subsection (4).

1611 (6) If, following a recommendation by an advisory jury that
 1612 the defendant be sentenced to life imprisonment, the state
 1613 intends to request the court to order that the defendant be
 1614 sentenced to death, the state must inform the defendant of such
 1615 request if the defendant has notified the court of his or her
 1616 intent to raise intellectual disability ~~mental retardation~~ as a
 1617 bar to the death sentence. After receipt of the notice from the
 1618 state, the defendant may file a motion requesting a
 1619 determination by the court of whether the defendant is
 1620 intellectually disabled ~~has mental retardation~~. Upon granting
 1621 the motion, the court shall proceed as provided in subsection
 1622 (4).

1623 (7) Pursuant to s. 924.07, the state may appeal, ~~pursuant~~
 1624 ~~to s. 924.07,~~ a determination of intellectual disability ~~mental~~

Page 56 of 69

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

591-03334-13

2013142c1

1625 ~~retardation~~ made under subsection (4).

1626 (8) This section does not apply to a defendant who was
1627 sentenced to death before June 12, 2001 ~~prior to the effective~~
1628 ~~date of this act.~~

1629 (9) For purposes of the application of the criminal laws
1630 and procedural rules of this state to any matters relating to
1631 the imposition and execution of the death penalty, the terms
1632 "intellectual disability" or "intellectually disabled" are
1633 interchangeable with and have the same meaning as the terms
1634 "mental retardation" or "retardation" and "mentally retarded" as
1635 those terms were defined before July 1, 2013.

1636 Section 39. Paragraph (b) of subsection (2) of section
1637 941.38, Florida Statutes, is amended to read:

1638 941.38 Extradition of persons alleged to be of unsound
1639 mind.-

1640 (2) For the purpose of this section:

1641 (b) A "mentally incompetent person" is one who because of
1642 mental illness, intellectual disability ~~mental retardation~~,
1643 senility, excessive use of drugs or alcohol, or other mental
1644 incapacity is incapable of ~~either~~ managing his or her property
1645 or caring for himself or herself or both.

1646 Section 40. Section 944.602, Florida Statutes, is amended
1647 to read:

1648 944.602 Agency notification before release of
1649 intellectually disabled ~~mentally retarded~~ inmates.-Before the
1650 release by parole, release by reason of gain-time allowances
1651 provided for in s. 944.291, or expiration of sentence of any
1652 inmate who has been diagnosed as having an intellectual
1653 disability ~~mentally retarded~~ as defined in s. 393.063, the

591-03334-13

2013142c1

1654 Department of Corrections shall notify the Agency for Persons
1655 with Disabilities in order that sufficient time be allowed to
1656 notify the inmate or the inmate's representative, in writing, at
1657 least 7 days ~~before~~ prior to the inmate's release, of available
1658 community services.

1659 Section 41. Subsection (2) of section 945.025, Florida
1660 Statutes, is amended to read:

1661 945.025 Jurisdiction of department.-

1662 (2) In establishing, operating, and using ~~utilizing~~ these
1663 facilities, the department shall attempt, whenever possible, to
1664 avoid the placement of nondangerous offenders who have potential
1665 for rehabilitation with repeat offenders or dangerous offenders.
1666 Medical, mental, and psychological problems must ~~shall~~ be
1667 diagnosed and treated whenever possible. The Department of
1668 Children and Family Services and the Agency for Persons with
1669 Disabilities shall cooperate to ensure the delivery of services
1670 to persons under the custody or supervision of the department.
1671 If ~~When it is the intent of~~ the department intends to transfer a
1672 mentally ill or retarded prisoner who has a mental illness or
1673 intellectual disability to the Department of Children and Family
1674 Services or the Agency for Persons with Disabilities, an
1675 involuntary commitment hearing shall be held in accordance with
1676 ~~according to the provisions of~~ chapter 393 or chapter 394.

1677 Section 42. Subsection (5) of section 945.12, Florida
1678 Statutes, is amended to read:

1679 945.12 Transfers for rehabilitative treatment.-

1680 (5) When the department plans to release an offender who is
1681 ~~a~~ mentally ill or intellectually disabled ~~retarded offender~~, an
1682 involuntary commitment hearing shall be held as soon as possible

591-03334-13 2013142c1

1683 ~~before~~ ~~prior to~~ his or her release in accordance with, ~~according~~
1684 ~~to the provisions of~~ chapter 393 or chapter 394.

1685 Section 43. Subsection (9) of section 945.42, Florida
1686 Statutes, is amended to read:

1687 945.42 Definitions; ss. 945.40-945.49.—As used in ss.
1688 945.40-945.49, the following terms shall have the meanings
1689 ascribed to them, unless the context shall clearly indicate
1690 otherwise:

1691 (9) "Mentally ill" means an impairment of the mental or
1692 emotional processes ~~that, of the ability to~~ exercise conscious
1693 control of one's actions, ~~or of the ability to~~ perceive or
1694 understand reality, which impairment substantially interferes
1695 with the ~~a~~ person's ability to meet the ordinary demands of
1696 living. However, ~~regardless of etiology, except that,~~ for the
1697 purposes of transferring ~~transfer of~~ an inmate to a mental
1698 health treatment facility, the term does not include a
1699 ~~retardation or~~ developmental disability as defined in s. 393.063
1700 ~~chapter 393,~~ simple intoxication, or conditions manifested only
1701 by antisocial behavior or substance abuse addiction. However, an
1702 individual who is ~~mentally retarded or~~ developmentally disabled
1703 may also have a mental illness.

1704 Section 44. Section 947.185, Florida Statutes, is amended
1705 to read:

1706 947.185 Application for intellectual disability ~~mental~~
1707 ~~retardation~~ services as condition of parole.—The Parole
1708 Commission may require as a condition of parole that any inmate
1709 who has been diagnosed as having an intellectual disability
1710 ~~mentally retarded~~ as defined in s. 393.063 shall, upon release,
1711 apply for services from the Agency for Persons with

591-03334-13 2013142c1

1712 Disabilities.

1713 Section 45. Subsection (4) of section 984.19, Florida
1714 Statutes, is amended to read:

1715 984.19 Medical screening and treatment of child;
1716 examination of parent, guardian, or person requesting custody.—

1717 (4) A judge may order that a child alleged to be or
1718 adjudicated a child in need of services be treated by a licensed
1719 health care professional. The judge may also order such child to
1720 receive mental health or intellectual disability ~~retardation~~
1721 services from a psychiatrist, psychologist, or other appropriate
1722 service provider. If it is necessary to place the child in a
1723 residential facility for such services, ~~then~~ the procedures and
1724 criteria established in s. 394.467 or chapter 393 shall be used,
1725 as whichever is applicable. A child may be provided ~~mental~~
1726 ~~health or retardation~~ services in emergency situations, ~~pursuant~~
1727 to the procedures and criteria contained in s. 394.463(1) or
1728 chapter 393, as whichever is applicable.

1729 Section 46. Paragraph (a) of subsection (3) of section
1730 985.14, Florida Statutes, is amended to read:

1731 985.14 Intake and case management system.—

1732 (3) The intake and case management system shall facilitate
1733 consistency in the recommended placement of each child, and in
1734 the assessment, classification, and placement process, with the
1735 following purposes:

1736 (a) An individualized, multidisciplinary assessment process
1737 that identifies the priority needs of each ~~individual~~ child for
1738 rehabilitation and treatment and identifies any needs of the
1739 child's parents or guardians for services that would enhance
1740 their ability to provide adequate support, guidance, and

591-03334-13 2013142c1

1741 supervision for the child. ~~The~~ This process begins ~~shall begin~~
 1742 with the detention risk assessment instrument and decision,
 1743 ~~includes shall include~~ the intake preliminary screening and
 1744 comprehensive assessment for substance abuse treatment services,
 1745 mental health services, intellectual disability ~~retardation~~
 1746 services, literacy services, and other educational and treatment
 1747 services as components, additional assessment of the child's
 1748 treatment needs, and classification regarding the child's risks
 1749 to the community. The completed multidisciplinary assessment
 1750 process must ~~shall~~ result in the predisposition report.

1751 Section 47. Paragraph (g) of subsection (1) and subsection
 1752 (5) of section 985.145, Florida Statutes, are amended to read:

1753 985.145 Responsibilities of juvenile probation officer
 1754 during intake; screenings and assessments.—

1755 (1) The juvenile probation officer shall serve as the
 1756 primary case manager for the purpose of managing, coordinating,
 1757 and monitoring the services provided to the child. Each program
 1758 administrator within the Department of Children and Family
 1759 Services shall cooperate with the primary case manager in
 1760 carrying out the duties and responsibilities described in this
 1761 section. In addition to duties specified in other sections and
 1762 through departmental rules, the assigned juvenile probation
 1763 officer shall be responsible for the following:

1764 (g) Comprehensive assessment.—The juvenile probation
 1765 officer, pursuant to uniform procedures established by the
 1766 department and upon determining that the report, affidavit, or
 1767 complaint is complete, shall:

1768 1. Perform the preliminary screening and make referrals for
 1769 a comprehensive assessment regarding the child's need for

591-03334-13 2013142c1

1770 substance abuse treatment services, mental health services,
 1771 intellectual disability ~~retardation~~ services, literacy services,
 1772 or other educational or treatment services.

1773 2. ~~If when~~ indicated by the preliminary screening, provide
 1774 for a comprehensive assessment of the child and family for
 1775 substance abuse problems, using community-based licensed
 1776 programs with clinical expertise and experience in the
 1777 assessment of substance abuse problems.

1778 3. ~~If when~~ indicated by the preliminary screening, provide
 1779 for a comprehensive assessment of the child and family for
 1780 mental health problems, using community-based psychologists,
 1781 psychiatrists, or other licensed mental health professionals who
 1782 have clinical expertise and experience in the assessment of
 1783 mental health problems.

1784 (5) If the screening and assessment indicate that the
 1785 interests of the child and the public will be best served
 1786 ~~thereby~~, the juvenile probation officer, with the approval of
 1787 the state attorney, may refer the child for care, diagnostic,
 1788 and evaluation services; substance abuse treatment services;
 1789 mental health services; intellectual disability ~~retardation~~
 1790 services; a diversionary, arbitration, or mediation program;
 1791 community service work; or other programs or treatment services
 1792 voluntarily accepted by the child and the child's parents or
 1793 legal guardian. ~~If whenever~~ a child volunteers to participate in
 1794 any work program under this chapter or volunteers to work in a
 1795 specified state, county, municipal, or community service
 1796 organization supervised work program or to work for the victim,
 1797 the child is ~~shall be~~ considered an employee of the state for
 1798 the purposes of liability. In determining the child's average

591-03334-13 2013142c1

1799 weekly wage, unless otherwise determined by a specific funding
 1800 program, all remuneration received from the employer is
 1801 considered a gratuity, and the child is not entitled to any
 1802 benefits otherwise payable under s. 440.15, regardless of
 1803 whether the child may be receiving wages and remuneration from
 1804 other employment with another employer and regardless of the
 1805 child's future wage-earning capacity.

1806 Section 48. Subsections (2) and (6) of section 985.18,
 1807 Florida Statutes, are amended to read:

1808 985.18 Medical, psychiatric, psychological, substance
 1809 abuse, and educational examination and treatment.—

1810 (2) ~~If whenever~~ a child has been found to have committed a
 1811 delinquent act, or before such finding with the consent of any
 1812 parent or legal custodian of the child, the court may order the
 1813 child to be treated by a physician. The court may also order the
 1814 child to receive mental health, substance abuse, or intellectual
 1815 disability ~~retardation~~ services from a psychiatrist,
 1816 psychologist, or other appropriate service provider. If it is
 1817 necessary to place the child in a residential facility for such
 1818 services, the procedures and criteria established in chapter
 1819 393, chapter 394, or chapter 397, as whichever is applicable,
 1820 ~~must shall~~ be used. After a child has been adjudicated
 1821 delinquent, if an educational needs assessment by the district
 1822 school board or the Department of Children and Family Services
 1823 has been ~~previously~~ conducted, the court shall order the report
 1824 ~~of such needs assessment~~ included in the child's court record in
 1825 lieu of a new assessment. For purposes of this section, an
 1826 educational needs assessment includes, but is not limited to,
 1827 reports of intelligence and achievement tests, screening for

Page 63 of 69

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

591-03334-13 2013142c1

1828 learning and other disabilities ~~and other handicaps~~, and
 1829 screening for the need for alternative education.

1830 (6) A physician ~~must shall~~ be immediately notified by the
 1831 person taking the child into custody or the person having
 1832 custody if there are indications of physical injury or illness,
 1833 or the child shall be taken to the nearest available hospital
 1834 for emergency care. A child may be provided mental health,
 1835 substance abuse, or intellectual disability ~~retardation~~
 1836 ~~services~~, in emergency situations, pursuant to chapter 393,
 1837 chapter 394, or chapter 397, as whichever is applicable. After a
 1838 hearing, the court may order the custodial parent or parents,
 1839 guardian, or other custodian, if found able to do so, to
 1840 reimburse the county or state for the expense involved in such
 1841 emergency treatment or care.

1842 Section 49. Paragraph (e) of subsection (1), subsections
 1843 (2) through (4), and paragraph (a) of subsection (6) of section
 1844 985.19, Florida Statutes, are amended to read:

1845 985.19 Incompetency in juvenile delinquency cases.—

1846 (1) If, at any time prior to or during a delinquency case,
 1847 the court has reason to believe that the child named in the
 1848 petition may be incompetent to proceed with the hearing, the
 1849 court on its own motion may, or on the motion of the child's
 1850 attorney or state attorney must, stay all proceedings and order
 1851 an evaluation of the child's mental condition.

1852 (e) For incompetency evaluations related to intellectual
 1853 disability ~~mental retardation~~ or autism, the court shall order
 1854 the Agency for Persons with Disabilities to examine the child to
 1855 determine if the child meets the definition of "intellectual
 1856 disability" ~~"retardation"~~ or "autism" in s. 393.063 and, if so,

Page 64 of 69

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

591-03334-13

2013142c1

1857 whether the child is competent to proceed with delinquency
1858 proceedings.

1859 (2) A child who is adjudicated incompetent to proceed, and
1860 who has committed a delinquent act or violation of law, either
1861 of which would be a felony if committed by an adult, must be
1862 committed to the Department of Children and Family Services for
1863 treatment or training. A child who has been adjudicated
1864 incompetent to proceed because of age or immaturity, or for any
1865 reason other than for mental illness, intellectual disability,
1866 ~~or retardation~~ or autism, must not be committed to the
1867 department or to the Department of Children and Family Services
1868 for restoration-of-competency treatment or training services.
1869 For purposes of this section, a child who has committed a
1870 delinquent act or violation of law, either of which would be a
1871 misdemeanor if committed by an adult, may not be committed to
1872 the department or to the Department of Children and Family
1873 Services for restoration-of-competency treatment or training
1874 services.

1875 (3) If the court finds that a child has mental illness,
1876 intellectual disability ~~mental retardation~~, or autism and
1877 adjudicates the child incompetent to proceed, the court must
1878 also determine whether the child meets the criteria for secure
1879 placement. A child may be placed in a secure facility or program
1880 if the court makes a finding by clear and convincing evidence
1881 that:

1882 (a) The child has mental illness, intellectual disability
1883 ~~mental retardation~~, or autism and because of the mental illness,
1884 intellectual disability ~~mental retardation~~, or autism:

1885 1. The child is manifestly incapable of surviving with the

Page 65 of 69

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

591-03334-13

2013142c1

1886 help of willing and responsible family or friends, including
1887 available alternative services, and without treatment or
1888 training the child is likely to ~~either~~ suffer from neglect or
1889 refuse to care for self, and such neglect or refusal poses a
1890 real and present threat of substantial harm to the child's well-
1891 being; or

1892 2. There is a substantial likelihood that in the near
1893 future the child will inflict serious bodily harm on self or
1894 others, as evidenced by recent behavior causing, attempting, or
1895 threatening such harm; and

1896 (b) All available less restrictive alternatives, including
1897 treatment or training in community residential facilities or
1898 community settings which would offer an opportunity for
1899 improvement of the child's condition, are inappropriate.

1900 (4) A child who is determined to have mental illness,
1901 intellectual disability ~~mental retardation~~, or autism, who has
1902 been adjudicated incompetent to proceed, and who meets the
1903 criteria set forth in subsection (3), must be committed to the
1904 Department of Children and Family Services and receive treatment
1905 or training in a secure facility or program that is the least
1906 restrictive alternative consistent with public safety. Any
1907 placement of a child to a secure residential program must be
1908 separate from adult forensic programs. If the child attains
1909 competency, ~~then~~ custody, case management, and supervision of
1910 the child shall ~~will~~ be transferred to the department in order
1911 to continue delinquency proceedings; however, the court retains
1912 authority to order the Department of Children and Family
1913 Services to provide continued treatment or training to maintain
1914 competency.

Page 66 of 69

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

591-03334-13

2013142c1

1915 (a) A child adjudicated incompetent due to intellectual
 1916 disability ~~mental retardation~~ or autism may be ordered into a
 1917 secure program or facility designated by the Department of
 1918 Children and Family Services for children who have intellectual
 1919 disabilities ~~with mental retardation~~ or autism.

1920 (b) A child adjudicated incompetent due to mental illness
 1921 may be ordered into a secure program or facility designated by
 1922 the Department of Children and Family Services for children
 1923 having mental illnesses.

1924 (c) ~~If whenever~~ a child is placed in a secure residential
 1925 facility, the department shall ~~will~~ provide transportation to
 1926 the secure residential facility for admission and from the
 1927 secure residential facility upon discharge.

1928 (d) The purpose of the treatment or training is the
 1929 restoration of the child's competency to proceed.

1930 (e) The service provider must file a written report with
 1931 the court pursuant to the applicable Florida Rules of Juvenile
 1932 Procedure within ~~not later than~~ 6 months after the date of
 1933 commitment, or at the end of any period of extended treatment or
 1934 training, and at any time the Department of Children and Family
 1935 Services, through its service provider, determines the child has
 1936 attained competency or no longer meets the criteria for secure
 1937 placement, or at such shorter intervals as ordered by the court.
 1938 A copy of a written report evaluating the child's competency
 1939 must be filed by the provider with the court and with the state
 1940 attorney, the child's attorney, the department, and the
 1941 Department of Children and Family Services.

1942 (6) (a) If a child is determined to have mental illness,
 1943 intellectual disability ~~mental retardation~~, or autism and is

591-03334-13

2013142c1

1944 found to be incompetent to proceed but does not meet the
 1945 criteria set forth in subsection (3), the court shall commit the
 1946 child to the Department of Children and Family Services and
 1947 ~~shall~~ order the Department of Children and Family Services to
 1948 provide appropriate treatment and training in the community. The
 1949 purpose of the treatment or training is the restoration of the
 1950 child's competency to proceed.

1951 Section 50. Section 985.195, Florida Statutes, is amended
 1952 to read:

1953 985.195 Transfer to other treatment services.—Any child
 1954 committed to the department may be transferred to intellectual
 1955 disability ~~retardation~~, mental health, or substance abuse
 1956 treatment facilities for diagnosis and evaluation pursuant to
 1957 chapter 393, chapter 394, or chapter 397, as ~~whichever is~~
 1958 applicable, for up to ~~a period not to exceed~~ 90 days.

1959 Section 51. Paragraph (b) of subsection (1) of section
 1960 985.61, Florida Statutes, is amended to read:

1961 985.61 Early delinquency intervention program; criteria.—

1962 (1) The Department of Juvenile Justice shall, contingent
 1963 upon specific appropriation and with the cooperation of local
 1964 law enforcement agencies, the judiciary, district school board
 1965 personnel, the office of the state attorney, the office of the
 1966 public defender, the Department of Children and Family Services,
 1967 and community service agencies that work with children,
 1968 establish an early delinquency intervention program, the
 1969 components of which shall include, but not be limited to:

1970 (b) Treatment modalities, including substance abuse
 1971 treatment services, mental health services, and ~~retardation~~
 1972 services for intellectual disabilities.

591-03334-13

2013142c1

1973 Section 52. It is the intent of the Legislature that this
1974 act not expand or contract the scope or application of any
1975 provision of the Florida Statutes. This act may not be construed
1976 to change the application of any provision of Florida Statutes
1977 to any person.

1978 Section 53. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Intellectual Disabilities

Bill Number SB 142
~~SB 142~~
(if applicable)

Name Deborah Linton

Amendment Barcode
(if applicable)

Job Title Executive Director

Address Havana, Suite 1

Phone 850-921-0960

Street

Tallahassee FL 32308

City

State

Zip

E-mail deborah@acephysio.com

Speaking: For Against Information

Representing The Arc of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic

Intellectual Disabilities

Bill Number

SB 142

(if applicable)

Name

Dixie Sansom

Amendment Barcode

(if applicable)

Job Title

Lobbyist

Address

PO Box 98

Phone

321-543-0195

Street

Cocoa

FL

32923

City

State

Zip

E-mail

dixiesansom@ad.com

Speaking:

For

Against

Information

Representing

The Arc of ~~FL~~ Florida

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military Affairs, Space, and Domestic Security, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Criminal Justice
Environmental Preservation and Conservation

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR THAD ALTMAN

16th District

April 2, 2013

The Honorable John Thrasher
Senate Committee on Rules, Chair
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Thrasher:

I respectfully request that SB 142, *Intellectual Disabilities*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration. Should you have any questions please contact me.

Sincerely,

A handwritten signature in blue ink that reads "Thad Altman".

Thad Altman
TA/sb

cc: John B. Phelps, Staff Director, 402 Senate Office Building

REPLY TO:

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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 Rules

BILL: CS/CS/SB 274

INTRODUCER: Rules Committee, Transportation Committee; Senator Dean and others

SUBJECT: Freemasonry License Plates

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	Fav/CS
2.	Everette	Phelps	RC	Fav/CS
3.			ATD	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 274 requires the Department of Highway Safety and Motor Vehicles (DHSMV, department) to develop the Freemasonry specialty license plate. The bill also provides:

- an annual use fee of \$25 for the plate; and
- clarifies that the department shall retain all annual use fees from the sale of the Freemasonry specialty license plate until the \$60,000 processing fee and the minimum 1,000 presale voucher requirements are met, thereafter distributing the use fees received from the sale of the license plate to the Masonic Home Endowment Fund, Inc.

This bill substantially amends ss. 320.08056 and 320.08058, of the Florida Statutes.

II. Present Situation:

Specialty License Plates

Specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. Annual use fees ranging from \$15 to \$25, paid in addition to required license taxes and service fees, are distributed to an organization in support of a

particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization.

Annual use fees, or any interest earned from those fees, may be used by the authorized organization for public or private purposes; however, the annual fees may not be used for commercial or for-profit activities, or for general administrative expenses (except as specifically authorized or to pay the cost of the audit or report required to ensure the proceeds are used as authorized).

The sponsoring organization wishing to receive a specialty license plate is required to comply with the requirements of s. 320.08053, F.S., which include:

- describing the proposed specialty license, and submit a sample plate that conforms to the specifications set by the department;
- paying the \$60,000 processing fee which defrays the department's cost for reviewing the application and developing the specialty license plate, if authorized; and
- providing a marketing strategy outlining short-term and long-term marketing plans and a projected financial analysis outlining the anticipated and planned revenues from the sale of the requested specialty license plate.

The approved specialty license plate organization must presell a minimum of 1,000 vouchers within 24 months before the department can begin manufacturing the specialty license plate. If, at the end of the 24-month presale period, the minimum sales requirements have not been met, the department will de-authorize the specialty plate, discontinue development, and discontinue issuance of the presale voucher.

Currently, there is a moratorium on the issuance of new specialty license plates. Section 45, Ch. 2008-176, L.O.F., as amended by s. 21, Ch. 2010-223, L.O.F., provides that "[e]xcept for a specialty license plate proposal which has submitted a letter of intent to the Department of Highway Safety and Motor Vehicles prior to May 2, 2008, and which has submitted a valid survey, marketing strategy, and application fee as required by s. 320.08053, F. S., prior to October 1, 2008, or which was included in a bill filed during the 2008 Legislative Session, the Department of Highway Safety and Motor Vehicles may not issue any new specialty license plates pursuant to ss. 320.08056 and 320.08058, F.S., between July 1, 2008, and July 1, 2014."

DHSMV is authorized to annually retain the first proceeds derived from the annual use fees collected in an amount sufficient to defray each specialty plate's pro rata (proportionate) share of DHSMV's costs directly related to issuing the specialty license plate. A person wishing to purchase a specialty license plate must pay, in addition to the required license plate fee and license tax, a license plate annual use fee (from \$15 to \$25) and a processing fee of \$5.

Freemasonry license plate

Thirty nine states offer the Freemasonry license plate for a cost from \$20 to \$40, depending on the state.¹

The Masonic Home Endowment Fund, Inc., is a 501(c)(3), public charity organization. The Masonic Home Endowment Fund, Inc., was founded around 1987 in the Jacksonville, Florida area.² The Grand Lodge of Florida³ is just one company under the auspices of the Masonic Home Endowment Fund, Inc. The Grand Lodge of Florida is a retirement living facility for senior masons and their spouses/widows. The facility has two-levels of care; round the clock care and assisted living with geriatric physicians and specialists on the premises.

III. Effect of Proposed Changes:

The bill authorizes the department to develop and issue the Freemasonry specialty license plate. Drivers can purchase the specialty plate upon payment of the appropriate license taxes and fees and a \$25 annual use fee.

The bill clarifies that the department will retain all of the annual use fees from the sale of the Freemasonry specialty license until all startup costs for developing and issuing the plates are recovered, notwithstanding the provisions of s. 320.08053, F.S. Thereafter, once the \$60,000 processing fee and the minimum 1,000 presell vouchers are met, the \$25 use fee will be distributed to the Masonic Home Endowment Fund, Inc., which may use up to 10 percent of the proceeds to promote and market the plate. The remainder of the proceeds must be used by the Masonic Home of Florida., to invest and reinvest and use the interest for its operations.

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

Other Potential Implications:

The plate does not qualify to be exempted from the requirements of the moratorium.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹ <http://www.daylightlodge.org/licenseplates.htm> (last visited on 3/17/2013)

² <http://www.lincc.us/PubApps/showVals.php?ein=592740213> (last visited on 3/18/2013)

³ <http://masonichomeofflorida.org/aboutus.html> (last visited on 3/18/2013)

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

None.

B. Private Sector Impact:

Persons who purchase the Freemasonry specialty license plate will pay a \$25 annual use fee in addition to normal registration fees.

Proceeds from the sale of the Freemasonry specialty license plate will be distributed to the Masonic Home Endowment Fund, Inc.

C. Government Sector Impact:

The department's Information Systems Administration Office will require approximately 88 hours, non-recurring, in order to develop, design, manufacture, distribute the specialty license plate, and implement the provisions of this bill.

According to the department, the sponsoring organization has not yet fulfilled all requirements of s. 320.08053, F.S., which includes a \$60,000 application fee which is used by the department to offset startup costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Rules Committee on April 9, 2013:**

The CS/CS clarifies that the department shall retain all annual use fees from the sale of the Freemasonry specialty license plate until all startup costs for developing and issuing the plates have been recovered.

CS by Transportation Committee on March 21, 2013:

The CS added provisions authorizing the department, notwithstanding provisions of s. 320.08053, F.S., to develop and issue a Freemasonry specialty license plate. However, once all of the requirements are met, the department will distribute the \$25 use fees to Masonic Home Endowment Fund, Inc.

The CS also changed the effective date to October 1, 2013.

B. Amendments:

None.

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



247518

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2013	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete line 26
and insert:

(b) The department shall retain all annual use fees from
the sale

By the Committee on Transportation; and Senators Dean, Evers,
and Latvala

596-02854-13

2013274c1

1 A bill to be entitled
2 An act relating to specialty license plates; amending
3 ss. 320.08056 and 320.08058, F.S.; creating a
4 Freemasonry license plate; establishing an annual use
5 fee for the plate; providing for the distribution of
6 use fees received from the sale of such plates;
7 providing an effective date.
8

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

11 Section 1. Paragraph (aaaa) is added to subsection (4) of
12 section 320.08056, Florida Statutes, to read:

13 320.08056 Specialty license plates.-

14 (4) The following license plate annual use fees shall be
15 collected for the appropriate specialty license plates:

16 (aaaa) Freemasonry license plate, \$25.

17 Section 2. Subsection (79) is added to section 320.08058,
18 Florida Statutes, to read:

19 320.08058 Specialty license plates.-

20 (79) FREEMASONRY LICENSE PLATES.-

21 (a) Notwithstanding the provisions of s. 320.08053, the
22 department shall develop a Freemasonry license plate as provided
23 in this section. The word "Florida" must appear at the top of
24 the plate, and the words "In God We Trust" must appear at the
25 bottom of the plate.

26 (b) The department shall retain all revenues from the sale
27 of such plates until all startup costs for developing and
28 issuing the plates have been recovered. Thereafter, the license
29 plate annual use fees shall be distributed to the Masonic Home

Page 1 of 2

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

596-02854-13

2013274c1

30 Endowment Fund, Inc., which may use a maximum of 10 percent of
31 the proceeds to promote and market the plate. The remainder of
32 the proceeds shall be used by the Masonic Home Endowment Fund,
33 Inc., to invest and reinvest and use the interest for the
34 operation of the Masonic Home of Florida, a five-star facility
35 dedicated to the care of Masons and their families.

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

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR CHARLES S. DEAN, SR.
5th District

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

March 27, 2013

The Honorable John Thrasher
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RECEIVED

MAR 27 2013

**SENATE
RULES COMMITTEE**

Dear Chairman Thrasher:

I respectfully request you place Senate Bill 274, relating to Specialty License Plates on your Rules Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in cursive script that reads "Charles S. Dean".

Charles S. Dean
State Senator District 5

cc: John B. Phelps, Staff Director

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

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 Rules

BILL: CS/SB 496

INTRODUCER: Judiciary Committee and Senator Dean

SUBJECT: Marshal of the Supreme Court

DATE: April 5, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	Fav/CS
2.	Cellon	Cannon	CJ	Favorable
3.	Shankle	Phelps	RC	Favorable
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 496 amends ss. 25.251 and 25.271, F.S., concerning the Office of the Marshal of the Supreme Court to:

- Require that the marshal and his or her assistants, redesignated as deputies under the bill, be law enforcement officers as defined under s. 943.10(1), F.S.;
- Give the marshal and his or her deputies statewide authority to bear arms and perform and make arrests in connection with their official duties for the Supreme Court;
- Specify that the marshal and his or her deputies must comply with s. 943.13, F.S., relating to the qualifications and training of law enforcement officers; and
- Remove the requirement that they complete a minimum standards training program by the Criminal Justice Standards Training Commission since the marshal and deputies are required to comply with all of the provisions in s. 943.13, F.S., to be certified as law enforcement officers.

This bill substantially amends sections 25.251 and 25.271 of the Florida Statutes:

II. Present Situation:

Article V, section 3 of the Florida Constitution directs the Florida Supreme Court to appoint a marshal. Section 25.251, F.S., codifies this requirement and creates the Office of the Marshal of the Florida Supreme Court. The marshal's primary role, as specified in s. 25.271, F.S., is to provide safety and security for the justices, employees, and facilities of the Supreme Court and be conservators of the peace in any building in which the Supreme Court is sitting.¹ In the course of carrying out those duties, a marshal, or his or her assistant, may apprehend any person disturbing the peace and deliver that person to the appropriate law enforcement officer.² Section 25.271, F.S., also requires that the marshal keep the grounds of the Supreme Court Building clean and free of trespassers.³

A marshal, and his or her assistants, is required to attend and complete a minimum standards training program by the Criminal Justice Standards Training Commission (CJSTC), which is housed within the Florida Department of Law Enforcement (FDLE).⁴ From 1983 until 2002, marshals and their assistants received training from the United States Marshals service which was approved by the CJSTC.⁵ However, in 2002, the FDLE advised that they lacked statutory authority to approve training programs not developed by the FDLE. This left only the basic recruit training offered by the FDLE.⁶

In addition to completion of the basic recruit training, s. 943.13, F.S., also requires that a person seeking certification as a law enforcement officer:

- (1) Be at least 19 years of age.
- (2) Be a citizen of the United States, notwithstanding any law of the state to the contrary.
- (3) Be a high school graduate or its "equivalent" as the commission has defined the term by rule.
- (4) Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States. Any person who, after July 1, 1981, pleads guilty or nolo contendere to or is found guilty of any felony or of a misdemeanor involving perjury or a false statement is not eligible for employment or appointment as an officer, notwithstanding suspension of sentence or withholding of adjudication. Notwithstanding this subsection, any person who has pled nolo contendere to a misdemeanor involving a false statement, prior to December 1, 1985, and has had such record sealed or expunged shall not be deemed ineligible for employment or appointment as an officer.
- (5) Have documentation of his or her processed fingerprints on file with the employing agency or, if a private correctional officer, have documentation of his or her processed fingerprints on file with the Department of Corrections or the Criminal Justice Standards and Training

¹ Section 25.271, F.S.

² *Id.*; The Office of the Marshal is concerned that s. 25.271(2), F.S., restricts him or her from keeping the peace and providing security for justices and other court personnel at off-site locations when the justices are not sitting as the Supreme Court. Office of the State Courts Administrator, *Revised Proposed Legislative Issue, Supreme Court Marshal Requirements and Authority*, January 16, 2013 (on file with Senate Committee on Judiciary).

³ Section 25.271(1), F.S.

⁴ Section 25.251, F.S.

⁵ Office of the State Courts Administrator, *supra* note 2.

⁶ The current practice of the Court is for the marshal to fill any vacancies among his or her assistants with certified law enforcement officers. *Id.*

Commission. ... The department shall search all arrest fingerprint cards received pursuant to s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system pursuant to this section and report to the employing agency any arrest records that are identified with the retained employee's fingerprints. ...

(6) Have passed a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by the commission. ...

(7) Have a good moral character as determined by a background investigation under procedures established by the commission.

(8) Execute and submit to the employing agency or, if a private correctional officer, submit to the appropriate governmental entity an affidavit-of-applicant form, adopted by the commission, attesting to his or her compliance with subsections (1)-(7). ...

(9) Complete a commission-approved basic recruit training program for the applicable criminal justice discipline, unless exempt under this subsection. An applicant who has:

(a) Completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal Government; and

(b) Served as a full-time sworn officer in another state or for the Federal Government for at least 1 year provided there is no more than an 8-year break in employment, as measured from the separation date of the most recent qualifying employment to the time a complete application is submitted for an exemption under this section,

is exempt in accordance with s. 943.131(2) from completing the commission-approved basic recruit training program.

(10) Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline.

(11) Comply with the continuing training or education requirements of s. 943.135.

These statutory requirements are more extensive than current law requires of the Marshal and his or her assistants.

III. Effect of Proposed Changes:

This bill requires that the marshal of the Supreme Court and his or her assistants be law enforcement officers as defined under s. 943.10(1), F.S. The specific provisions of the bill:

- Redesignate the Marshal's assistants as deputies in s. 25.251, F.S.
- Amend s. 25.251, F.S., to give a Marshal and his or her deputies' statewide authority to bear arms and make arrests in connection with their official duties for the Supreme Court.
- Require the Marshal and his or her deputies to comply with s. 943.13, F.S., relating to the qualifications of law enforcement officers. This conforms to the current practice of the Supreme Court to fill any vacancies in the Marshal's office with certified law enforcement officers.
- Amend s. 25.271, F.S., to remove subsection (2). This has the effect of consolidating provisions governing security and arrest authority of the Marshal and his or her deputies along with the authority to create the office of the Marshal in s. 25.251, F.S. Section 25.271, F.S., now solely addresses the Marshal's duty to maintain the Supreme Court Building and grounds.

The bill takes effect upon becoming a law.

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 bill is not expected to have a fiscal impact on the Florida Supreme Court as the court is currently hiring certified law enforcement officers to serve in the Marshal's Office.⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on March 12, 2013:

⁷ Office of the State Courts Administrator, *Revised Proposed Legislative Issue, Supreme Court Marshal Requirements and Authority*, January 16, 2013 (on file with Senate Committee on Judiciary).

The CS provides that the marshal and his or her deputies are law enforcement officers as defined under s. 943.10(1), F.S., and are authorized to make arrests in connection with their official duties for the Supreme Court.

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 the Committee on Judiciary; and Senator Dean

590-02268-13

2013496c1

A bill to be entitled

An act relating to the marshal of the Supreme Court; amending s. 25.251, F.S.; revising terminology; requiring the marshal and his or her deputies to comply with specified requirements for law enforcement officers; specifying that the marshal and his or her deputies are law enforcement officers with full powers to bear arms and make arrests under certain conditions; limiting the use of those powers to performance of official duties for the Supreme Court; amending s. 25.271, F.S.; deleting provisions relating to the marshal and his or her deputies being conservators of the peace; providing an effective date.

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

Section 1. Section 25.251, Florida Statutes, is amended to read:

25.251 Marshal of Supreme Court; appointment; qualification; authority ~~training.~~

(1) The Supreme Court shall appoint a marshal who shall hold office during the pleasure of the court.

(2) The marshal and his or her deputies must comply with s. 943.13 relating to requirements for law enforcement officers in this state ~~assistants shall attend and successfully complete a minimum standards training program approved by the Criminal Justice Standards and Training Commission within the Department of Law Enforcement.~~

Page 1 of 2

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

590-02268-13

2013496c1

(3) The marshal and his or her deputies shall be law enforcement officers as defined in s. 943.10(1), under the direction and control of the Supreme Court with full powers to bear arms and make arrests in accordance with the laws of this state. In performance of their official duties for the Supreme Court, they may apprehend without warrant a person disturbing the peace and deliver that person to the appropriate law enforcement officer of the municipality or county in which further proceedings may be held according to law. The powers granted in this section may be exercised only in furtherance of and in connection with performance of official duties for the Supreme Court.

Section 2. Section 25.271, Florida Statutes, is amended to read:

25.271 Custody of Supreme Court Building and grounds.—

~~(1) The said marshal shall, under the direction of the Supreme Court, be custodian of the Supreme Court Building and grounds and shall keep the same clean, sanitary, and free of trespassers and marauders and shall maintain the same in good state of repair and cause the grounds to be beautified and preserved against depredations and trespasses.~~

~~(2) The marshal and his or her assistants shall be conservators of the peace in the Supreme Court Building, or in any building in which the Supreme Court is sitting, and shall apprehend without warrant any person disturbing the peace and deliver that person to the appropriate law enforcement officer of the municipality or county in which further proceedings may be held according to law.~~

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

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 19 1201

Meeting Date

Topic _____

Bill Number 496
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

08/09/13

Meeting Date

Topic Marshal Bill

Bill Number 496
(if applicable)

Name Silvester Dawson

Amendment Barcode _____
(if applicable)

Job Title Marshal, Supreme Court

Address 500 South Dural Street
Street

Phone (850) 488-8845

Tallahassee FL
City State Zip

E-mail dawson@flcourts.org

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Supreme Court Marshal Bill Number 496
(if applicable)

Name Eric Maclure Amendment Barcode _____
(if applicable)

Job Title Intergov. Relations, State Court Administrators office

Address 500 South Duval St Phone 850-922-5692

Street
Tallahassee, FL 32399 E-mail Macluree@flcourts.org
City State Zip

Speaking: For Against Information

Representing State Courts System

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/CS/SB 390

INTRODUCER: Judiciary Committee; Criminal Justice Committee; Military Affairs, Space, and Domestic Security Committee; and Senator Dean

SUBJECT: Veterans' Organizations

DATE: April 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon	Ryon	MS	Fav/CS
2.	Clodfelter	Cannon	CJ	Fav/CS
3.	Shankle	Cibula	JU	Fav/CS
4.	Ryon	Phelps	RC	Favorable
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/CS/SB 390 makes it a violation of the Florida Deceptive and Unfair Trade Practices Act for an entity to advertise or hold itself out as a veterans' organization unless it is an actual veterans' organization as defined by the bill. The bill allows a veterans' organization to bring an action for injunctive relief against a violating entity. The bill provides that a business entity that unlawfully holds itself out as a veterans' organization commits a misdemeanor of the first degree.

The bill also amends s. 817.312, F.S., which prohibits persons from misrepresenting themselves as a current member or veteran of the United States military and wearing a uniform, medal or insignia that is authorized for use by members or veterans of the U.S. military while soliciting for charitable contributions. The bill amends the statute to apply when the person is either misrepresenting himself or herself as a servicemember or veteran or is wearing a military uniform, medal, or insignia that he or she is not authorized to wear. In addition, the prohibited activity is expanded to include misrepresentation or improper wear for the purpose of material gain.

This bill substantially amends section 817.312, Florida Statutes.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Veterans' organizations, also referred to as veterans' service organizations, are non-profit groups that advocate for and assist veterans, while also providing opportunities for veterans to get involved with the larger community. Their particular roles and activities vary. While the term "veterans' organization" is not defined in Florida Statutes in a broad context, these organizations are treated in much the same way as other charitable and non-profit organizations.

Congressionally-Chartered Veterans' Organizations

Title 36 of the U.S. Code lists national or patriotic non-profit corporations who have been granted corporate charters by act of Congress and whose primary purpose is to promote patriotic, charitable, educational, or other eleemosynary activities.¹ Many of these organizations are military veteran services oriented organizations. The corporations listed in Title 36 are not agencies of the United States, and the charter does not assign any governmental attributes.² The attraction of Title 36 status for national organizations is that it tends to provide an "official" imprimatur to their activities and, to that extent, it may provide them prestige and indirect financial benefit.

Currently, federal supervision of congressionally chartered non-profit organizations is limited. All "private corporations established under federal law," as defined and listed in Subtitle II,³ are required to have independent audits annually and to have the reports of the audits submitted to Congress.⁴ Such organizations are also required to submit annual reports of their activities to Congress.

Nationally Recognized Veterans' Organizations

The U.S. Department of Veterans Affairs (USDVA) is authorized to recognize certain veterans' organizations as national organizations for the purpose of assisting claimants for USDVA benefits in the preparation, presentation, and prosecution of their claims.⁵ A veterans' organization may be recognized as a national organization if it satisfies specified criteria, which requires that a veterans' organization:

- Has a primary purpose of serving veterans;
- Demonstrates a substantial service to veterans;

¹ These entities are referred to as "Title 36 corporations" because they are found in Title 36 of the U.S. Code.

² Ronald C. Moe, *Congressionally Charters Non-profit Organizations ("Title 36 Corporations"): What They Are and how Congress Treats Them*, CRS Report for Congress; April 8, 2004, available at: <http://www.coherentbabble.com/signingstatements/CRS/CRS-RL30340%5B1%5DPL107-41.pdf>.

³ 36 U.S.C. Subtitle II.

⁴ 36 U.S.C. s. 10101.

⁵ 38 U.S.C. s. 5902.

- Commits a significant portion of its assets to veterans' services and has adequate funding to properly perform those services; and
- Maintains capability of providing complete claims service to each claimant requesting representation.⁶

In addition, a nationally recognized organization must have the capability and resources to provide representation to a sizeable number of claimants, must be geographically diversified (i.e., one or more posts in at least 10 states), and in the case of membership organizations, must maintain a membership of 2,000 or more persons.⁷

The USDVA maintains a directory of congressionally chartered and non-chartered veterans' organizations recognized as national organizations.⁸ This directory also includes other congressionally chartered and non-chartered veterans' organizations that are not recognized by the USDVA as national organizations, but which represent the interest of American veterans.

Annual Registration with Department of Agriculture and Consumer Services

Veterans' organizations that intend to solicit donations in Florida must register with the Florida Department of Agriculture and Consumer Services (DACS). Florida's Solicitation of Contributions Act requires charitable organizations that engage in solicitation activities in Florida to register with the DACS and provide certain financial and background information as well as pay initial and annual renewal fees.⁹ Registration statements must contain prescribed information¹⁰ and be accompanied by the appropriate fee.¹¹ Veterans' organizations that have been granted a federal charter under Title 36, U.S.C., are exempt from the DACS registration requirements.¹²

While the DACS does not oversee the activities of the organizations that are required to register with the DACS, it does monitor an organization's activities to ensure compliance with the requirements in the Solicitation of Contributions Act. In addition, the DACS provides information to the public on the organizations registered to solicit contributions in Florida via the DACS's Gift Givers' Guide.¹³

Federal and State Tax Exemptions for Veterans' Organizations

Depending on its organization or purpose, a veterans' organization may be recognized as tax exempt from federal income tax under the following sections of the Internal Revenue Code:

- 501(c)(19) – veterans' organizations

⁶ 38 CFR s. 14.628.

⁷ *Id.*

⁸ U.S. Department of Veterans Affairs. *Veterans and Military Service Organizations (Directory)*, http://www1.va.gov/vso/VSO-Directory_2012-2013.pdf (last visited Mar. 21, 2012).

⁹ Chapter 496, F.S.

¹⁰ Section 496.405(2), F.S.

¹¹ Section 496.405(4)(a), F.S.

¹² Section 496.406(3), F.S.

¹³ Florida Department of Agriculture and Consumer Services. *Florida Charities Gift Givers' Guide*, <https://csapp.800helpfla.com/cspublicapp/giftgiversquery/giftgiversquery.aspx> (last visited Mar. 21, 2012).

- 501(c)(4) – social welfare organizations
- 501(c)(7) – social clubs
- 501(c)(8) – fraternal beneficiary societies
- 501(c)(10) – domestic fraternal societies
- 501(c)(2) – title holding corporations¹⁴

Veterans' organizations must meet specified criteria in order to be granted tax exempt status under the Internal Revenue Code. For example, section 501(c)(19), I.R.C., provides for an exemption from federal income tax for an organization of past or present members of the United States Armed Forces if:

- It is organized in the United States;
- At least 75 percent of its members are past or present members of the U.S. Armed Forces;
- Substantially all of its other members are individuals who are cadets or are spouses, widows, widowers, ancestors or lineal descendants of past or present members of the U.S. Armed Forces or of cadets; and
- No part of the net earnings of which inures to the benefit of any private shareholder or individual.

Florida law exempts qualified veterans' organizations from tax on sales and leases, when used in carrying out customary veterans' organization activities.¹⁵ Veterans' organizations that qualify for this exemption are those that are nationally chartered or nationally recognized as a veterans' organization, which holds a current exemption under s. 501(c)(4) or (19) of the Internal Revenue Code. Additionally, under s. 220.22(4), F.S., certain veterans' organizations are exempt from state corporate income tax in Florida.

Civil and Criminal Actions

Organizations that solicit contributions for charitable purposes, including veterans' organizations, are subject to the requirements of chs. 496 and 501, F.S. Chapter 496, F.S., specifically governs solicitation of funds. Section 496.419, F.S., gives the DACS authority to investigate violations of ch. 496, F.S., and to bring administrative action against individuals and entities that violate the solicitation requirements. The DACS can issue cease and desist orders and assess fines of up to \$500 per act or omission for 501(c)(3) organizations and up to \$1000 per act or omission for other individuals or entities. In addition, the DACS is required to report criminal violations of ch. 496, F.S., to the prosecuting authority. Willful and knowing violation of ss. 496.401-495.424, F.S., is a third degree felony for the first offense and a second degree felony for subsequent offenses.¹⁶

Section 496.416, F.S., provides that violation of any provision of ss. 496.401-495.424, F.S., is also an unfair or deceptive act or practice or an unfair method of competition in violation of

¹⁴ Internal Revenue Service. *Tax Guide: Veterans' Organizations*, <http://www.irs.gov/pub/irs-pdf/p3386.pdf> (last visited Mar. 21, 2012).

¹⁵ Section 212.08(7)(n), F.S.

¹⁶ Section 496.417, F.S. A third degree felony is punishable by imprisonment for not more than 5 years and a fine of up to \$5000. A second degree felony is punishable by imprisonment for not more than 15 years and a fine of up to \$5000.

ch. 501, part II of the Florida Statutes (the “Florida Deceptive and Unfair Trade Practices Act”). Violations of the Florida Deceptive and Unfair Trade Practices Act are enforced by either the appropriate state attorney or the Department of Legal Affairs (Attorney General’s Office). Available civil remedies include cease and desist orders and civil penalties of up to \$10,000 per violation.¹⁷

In addition to action taken by an enforcing authority, s. 501.211, F.S., authorizes anyone who has been aggrieved by a practice that is in violation of the Florida Deceptive and Unfair Trade Practices Act to bring a civil action against the violator. In such an action, the aggrieved party can obtain injunctive relief, recover any actual damages, and be awarded attorney fees and court costs. However, the defendant may be awarded attorney fees and court costs if it prevails in defending the claim.

Section 817.312, F.S., makes misrepresenting oneself as a member or veteran of the United States military, while wearing the uniform of or any medal or insignia authorized for use by members or veterans of the United States military, in order to solicit charitable contributions a third degree felony.

III. Effect of Proposed Changes:

Section 1: Solicitation of Funds by Veterans’ Organizations

This section of the bill defines a veterans’ organization as a business entity whose earnings do not benefit of a private shareholder and that exists for one or more of the following purposes:

- Promoting the social welfare;
- Assisting needy war veterans and their dependents;
- Providing entertainment and care to hospitalized veterans;
- Carrying on programs to perpetuate the memory of deceased veterans;
- Conducting programs for religious, charitable, scientific, literary, or educational purposes;
- Providing insurance benefits for their members or their dependents;
- Providing social activities for their members;
- The earnings of the organization are devoted to charitable, religious, scientific, literary, educational, or fraternal purposes.

The bill forbids an entity from advertising or holding itself out as a veterans’ organization unless it is an actual veterans’ organization as defined by the bill. Any violation of this prohibition is a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501 Florida Statutes. Consistent with that act, the bill allows a veterans’ organization whose membership consists of current or past members of the armed forces and their families to bring an action against the entity to obtain an injunction against it.

In many cases, actions that are proscribed in the bill would also violate ch. 496 or ch. 501, F.S., but the violation might not prompt action by government entities charged with enforcing those

¹⁷ Section 501.2077, F.S., provides for an enhanced civil penalty of up to \$15,000 per violation if the illegal practice victimized senior citizens or handicapped persons.

chapters. It is also not clear that a veterans' organization would be an "aggrieved party" which could bring an individual action under s. 501.211, F.S. The bill provides a legal mechanism for legitimate veterans' organizations to stop misrepresentation and solicitation by purported veterans' organizations.

The bill also provides that it is a first degree misdemeanor for a business entity to hold itself out as a veterans' organization if it does not in fact operate primarily for the financial benefit and moral support of veterans and their families.¹⁸

Section 2: Solicitation While Wearing a Military Uniform

This section of the bill amends s. 817.312, F.S., in several ways:

- It prohibits soliciting for charitable contributions while either misrepresenting that one is a member or veteran of the United States military or while wearing the uniform of or any medal or insignia that is authorized for wear by members or veterans of the United States military. Currently, the statute prohibits a person from soliciting for charitable contributions while misrepresenting military or veteran status if the person is wearing a US military uniform, medal, or insignia at the time.
- It expands the scope of the criminal offense to include misrepresenting military status or wearing a United States military uniform, medal or insignia "for the purpose of material gain."
- It provides that a person does not violate the statute for wearing a US military uniform, medal, or insignia that he or she is authorized to wear, or if the person is an actor engaged in a theatrical production.

Unlike s. 250.43, F.S., which prohibits the wearing of a United States military uniform, any part of such uniform, or any similar uniform, s. 817.312, F.S., does not prohibit the wearing of part of a uniform (except for medals or insignia which the person is not authorized to wear) or a uniform that is similar to a United States military uniform. In *State v. Montas*, the court pointed out that these provisions of s. 250.43, F.S., would prohibit a child from wearing his parent's Army boots or a person wearing an imitation military uniform for Halloween.¹⁹

Effective date: The bill provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁸ See *State v. Maloy*, 823 So. 2d 815 (Fla. 1st DCA 2002), which recognized "the principle of criminal law which ordinarily gives controlling effect to the particular and specific statutory proscriptions addressing acts which otherwise might also be circumscribed by more general criminal provisions."

¹⁹ *State v. Montas*, 993 So. 2d 1127 (Fla. 5th Dist. 2008). In *Montas*, s. 250.43, F.S., was found to be unconstitutional because its provisions banned both protected and unprotected speech. The constitutional implications of this bill are discussed in Section IV, Constitutional Issues.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill amends s. 817.312, F.S., to prohibit misrepresentation of military status or wearing a United States military uniform, medal, or insignia without authorization while soliciting for charitable contributions or for the purpose of material gain. This raises questions of whether such restrictions violate the Free Expression Clause of the First Amendment of the United States Constitution.

The issue of misrepresentation of military service was recently considered by the United States Supreme Court. In *United States v. Alvarez*, the Court considered the case of an official who was convicted of violating the Stolen Valor Act, 18 U.S.C. § 704(b), for falsely stating at a public meeting that he was a recipient of the Congressional Medal of Honor.²⁰ The Court found that the Stolen Valor Act, which made it a crime to lie about receiving military medals or honors, violated the First Amendment's guarantee of the right to free speech. In considering whether the conduct prohibited by the statute was protected speech, the Court noted that "The statute seeks to control and suppress all false statements on this one subject in almost limitless times and settings. And it does so entirely without regard to whether the lie was made for the purpose of material gain."²¹ The Court also noted: "Where false claims are made to effect a fraud or secure moneys or other valuable considerations, . . . , it is well established that the Government may restrict speech without affronting the First Amendment."²² The intent of the bill is to prohibit misrepresentation of military status only in connection with soliciting for charitable contributions or for the purpose of material gain. However, the Legislature may wish to state this explicitly to strengthen arguments that the bill does not run afoul of the First Amendment.

The prohibition against unauthorized wear of a military uniform, medal, or insignia is subject to similar analysis. As previously noted, the Fifth Circuit Court of Appeals found that the prohibition in s. 250.43, F.S., against wearing a United States military uniform, any part of such uniform, or any similar uniform was unconstitutionally broad.²³ The court focused on the fact that s. 250.43, F.S., did not include specific intent to deceive as an element of the offense, and that there was no way for it to narrowly interpret the statute to include such an element. This focus on "intent to deceive" is consistent with the reasoning in *United States v. Perelman*, which upheld 18 U.S.C. § 704(a) against a challenge that its prohibition against unauthorized wear of United States military medals

²⁰ *United States v. Alvarez*, 132 S. Ct. 2537 (2012).

²¹ *Id.* at 2547.

²² *Id.*

²³ *See Montas*, 993 So. 2d at 1132.

or decorations was overbroad on its face and thus unconstitutional.²⁴ In that case, the federal appellate court found that it could interpret the statute to reflect Congressional intent that it required “intent to deceive,” even though such intent was not explicitly stated.²⁵

Unlike s. 250.43, F.S., the bill’s amendment to s. 817.312, F.S., would prohibit unauthorized wear of a United States military uniform, medal, or insignia only in limited circumstances. The restriction of the prohibition to times when the wearer is soliciting for charitable contributions or is seeking material gain indicates that the bill is intended to prevent deception of potential donors or benefactors. If challenged in court, this portion of the statute would likely be upheld against a First Amendment challenge because it regulates an implicit misrepresentation for the purpose of material gain. However, addition of specific “intent to deceive” language would clarify the purpose of the statute.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Organizations that misrepresent themselves as operating primarily for the benefit of veterans and their families are subject to a civil penalty of up to \$500 and payment of the plaintiff’s attorney’s fees and court costs. If found guilty of the newly created first-degree misdemeanor offense, they are subject to a potential fine of up to \$1,000.

The impact of the amendments to s. 817.312, F.S., on prison bed space needs has not yet been considered by the Criminal Justice Estimating Conference.

C. Government Sector Impact:

The Office of the State Courts Administrator notes a probable, though indeterminate, increase in judicial time and court workload associated with the new civil and criminal processes.²⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁴ *United States v. Perelman*, 695 F.3d 866 (9th Cir. 2012).

²⁵ *Id.*

²⁶ Office of State Courts Administrator. 2013 Judicial Impact Statement for SB 390 (Feb. 24, 2013) (on file with the Senate Committee on Judiciary).

VIII. Additional Information:

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

CS/CS/CS by Judiciary on April 1, 2013

- Changes the definition of veterans' organization to match the definition given for such organizations by the Internal Revenue Service.
- Expressly makes a business entity that falsely holds itself out as a veterans' organization subject to penalties under the Florida Deceptive and Unfair Trade Practices Act.

CS/CS by Criminal Justice on February 19, 2013:

- Clarifies that Section 1 of the bill applies to any business entity falsely holding itself out as a veterans' organization and that it is intended to be additional to existing statutory remedies.
- Reorganizes Section 1 to combine the elements of the criminal offense and the criminal penalties in the same subsection of the new statute.
- Amends s. 817.312, F.S., to expand the scope of the existing criminal offense that prohibits misrepresentation of military or veteran status and wear of a military uniform, medal, or insignia while soliciting for charitable contributions.

CS by Military Affairs, Space, and Domestic Security on February 6, 2013:

The Committee Substitute reorganizes and modifies the bill to address technical issues.

- B. **Amendments:**

None.

By the Committees on Judiciary; Criminal Justice; and Military and Veterans Affairs, Space, and Domestic Security; and Senator Dean

590-03317-13

2013390c3

A bill to be entitled

An act relating to veterans' organizations; defining terms; prohibiting a business entity from advertising or holding itself out to the public as a veterans' organization or similar entity under certain circumstances; providing that an entity that violates the restrictions on advertizing violates the Florida Deceptive and Unfair Trade Practices Act; authorizing certain veterans' organizations to enforce the prohibition against false advertising; providing for criminal penalties; amending s. 817.312, F.S.; prohibiting misrepresentation as a service member or veteran and wearing military or veterans' uniform, medal, or insignia; providing an effective date.

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

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

(a) "Business entity" means any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, individual, or trust, whether fictitiously named or not, doing business in this state.

(b) "Veterans' organization" means a business entity whose net earnings do not inure to the benefit of any private shareholder or individual and that exists substantially for one or more of the following purposes:

1. Promoting the social welfare of the community.

2. Assisting disabled and needy war veterans and members of the United States Armed Forces and their dependents, and the

Page 1 of 3

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

590-03317-13

2013390c3

widows and orphans of deceased veterans.

3. Providing entertainment, care and assistance to hospitalized veterans or members of the United States Armed Forces.

4. Carrying on programs to perpetuate the memory of deceased veterans and members of the United States Armed Forces, and to comfort their survivors.

5. Conducting programs for religious, charitable, scientific, literary, or educational purposes.

6. Providing insurance benefits for their members or dependents of their members or both.

7. Providing social and recreational activities for their members.

8. The earnings of the organization are devoted to charitable, religious, scientific, literary, educational, or fraternal purposes.

(2) A business entity may not advertise or hold itself out to the public as a veterans' organization or similar entity unless the entity is a veterans' organization.

(3) A business entity that violates subsection (2) violates the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501, Florida Statutes.

(4) Consistent with part II of chapter 501, Florida Statutes, a veterans' organization whose membership is limited to past or present members of the United States Armed Forces, individuals who are cadets or are spouses, widows, widowers, ancestors or lineal descendants of past or present members of the United States Armed Forces or of cadets may bring an action to obtain a declaratory judgment that a business entity is

Page 2 of 3

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

590-03317-13

2013390c3

59 violating this section and to enjoin the entity who has
60 violated, is violating, or is otherwise likely to violate this
61 section.

62 (5) A business entity that knowingly and intentionally
63 represents itself as a veterans' organization or similar
64 organization but that does not comply with subsection (2)
65 commits a misdemeanor of the first degree, punishable as
66 provided in s. 775.082 or s. 775.083, Florida Statutes.

67 Section 2. Subsection (1) of section 817.312, Florida
68 Statutes, is amended to read:

69 817.312 Unlawful use of uniforms, medals, or insignia.-

70 (1) A person may not misrepresent himself or herself as a
71 member or veteran of the United States Air Force, United States
72 Army, United States Coast Guard, United States Marine Corps,
73 United States Navy, or National Guard or ~~and~~ wear the uniform of
74 or any medal or insignia authorized for use by members or
75 veterans of the United States Air Force, United States Army,
76 United States Coast Guard, United States Marine Corps, United
77 States Navy, or the National Guard which he or she is not
78 authorized to wear while soliciting for charitable contributions
79 or for the purpose of material gain. This section does not
80 prohibit persons in the theatrical profession from wearing such
81 uniforms, medals, or insignia while actually engaged in such
82 profession.

83 Section 3. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 / 9 / 2013

Meeting Date

Topic _____

Bill Number 390
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

SENATOR CHARLES S. DEAN, SR.
5th District

April 1, 2013

The Honorable John Thrasher
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RECEIVED

APR 01 2013

SENATE
RULES COMMITTEE

Dear Chairman Thrasher:

I respectfully request you place Committee Substitute for Senate Bill 390, relating to Veterans Title Protection, on your Rules Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink that reads "Charles S. Dean".

Charles S. Dean
State Senator District 5

cc: John B. Phelps, Staff Director

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

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 Rules

BILL: CS/SB 1172

INTRODUCER: Judiciary Committee and Senator Simmons

SUBJECT: Land Trusts

DATE: April 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Fav/CS
2.	Knudson	Burgess	BI	Favorable
3.	Munroe	Phelps	RC	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1172 revises the laws relating to land trusts. In general, a land trust is a written instrument in which title to real property is vested in a trustee who has the authority to manage or dispose of the property.

More specifically, the bill:

- Clarifies the distinction between a land trust governed by s. 689.071, F.S., and other trusts governed by the Florida Trust Code.
- Defines a land trust based on the functional scope of the land trustee's duties, although the power to manage or dispose of property remains an essential element of a Florida land trust.
- Relocates provisions of s. 689.071, F.S., to a newly-created section, s. 689.073, F.S. These provisions generally state that purchasers and others can rely on a land trustee's authority over property as described in a recorded instrument. These provisions will remain equally applicable to any recorded instrument, created before or after the effective date of the bill, which conveys title to property and the power to manage or dispose of the property.

- Codifies a number of land trust practices and principles commonly used in Florida and Illinois which are derived from judicial precedents or treatises on land trusts.¹

This bill creates section 689.073, Florida Statutes.

This bill substantially amends sections 689.071, 689.073, and 736.0102 of the Florida Statutes.

II. Present Situation:

“A land trust is a unique creature of Illinois law where real estate is conveyed to a trustee under an arrangement reserving to the beneficiaries the full management and control of the property.”²
Under a land trust:

[t]he trustee executes deeds, mortgages or otherwise deals with the property at the written direction of the beneficiaries. The beneficiaries collect rents, improve and operate the property and exercise all rights of ownership other than holding or dealing with the legal title.... While legal title to the real estate is held by the trustee, the beneficiaries retain ‘the power of direction’ to deal with the title, to manage and control the property, to receive proceeds from sales or mortgages and all rentals and avails on the property.³

Land trusts were initially developed in Illinois. The use of these trusts in Florida was validated by the enactment of s. 689.071, F.S., the Florida Land Trust Act, in 1963.⁴ Section 689.071, F.S., has always focused primarily on the authority of the land trustee to convey good title to third parties if the prior deed to the land trustee granted to the trustee certain powers to deal with and dispose of the property, commonly referred to as “deed powers.”⁵ Serving primarily as a “purchaser protection” statute, s. 689.071, F.S., because the statute protects third party grantees, mortgagees, and lessees who rely on the statutory authority of the trustee based on those recorded *deed powers*. Those who rely on a trustee are not required to inquire into the identity of the beneficiaries or the terms of the unrecorded trust agreement.⁶ All persons dealing with the trustee of a land trust under a recorded instrument take free of claims of beneficiaries.⁷ The interests of beneficiaries under a land trust are personal property.⁸

¹ The Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper: Amendments to Land Trust Act* (2013) (on file with the Senate Committee on Judiciary). By codifying the land trust practices, it will facilitate and encourage the use of land trusts in Florida real property transactions. *Id.*

² 3A HORNER PROBATE PRAC. & ESTATES s.68:46 (2013); *In re Marriage of Gross*, 756 N.E.2d 312, 315 (1st Dist. 2001).

³ *In re Marriage of Gross*, 756 N.E.2d at 315.

⁴ Chapter 63-468, ss. 1-6, Laws of Fla. The statute was enacted to confirm the marketability and insurability of land purchased from a land trustee. Correspondence from the Real Property, Probate, and Trust Law Section of The Florida Bar (on file with the Senate Committee on Judiciary).

⁵ The Real Property, Probate, and Trust Law Section of the Florida Bar, *supra* note 1 and *also see* “Deed powers” refer to those that “the recorded instrument confers on the trustee the power and authority to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument.” Section 689.071(3), F.S.

⁶ Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 1; s. 689.071(4), F.S.

⁷ Section 689.071(5), F.S.

⁸ Section 689.071(6), F.S.

In Florida, the aspects of the land trust under s. 689.071, F.S., which confer legal title to the trustee, also apply to any recorded instrument that grants deed powers to a trustee.⁹ In order to obtain the *purchaser protection* aspects of the statute,¹⁰ it became common practice in Florida for conveyances to trustees to include s. 689.071, F.S., deed powers although the trust was not intended to be a land trust.

The primary purpose of this bill is to provide greater clarity in the manner that the Florida Land Trust Act and the Florida Trust Code¹¹ are intended to relate to each other by specifying a comprehensive statutory definition of land trust.¹²

III. Effect of Proposed Changes:

General overview

The bill clarifies the distinction between a land trust governed by s. 689.071, F.S. and other express trusts governed by the Florida Trust Code,¹³ but preserves the “title protection” benefits of the existing statute for any conveyance to trustee containing deed powers. To do so, the bill:

- Defines land trusts based on the functional scope of the land trustee’s duties, although deed powers remain an essential element of a Florida land trust.
- Relocates all the *purchaser protection* provisions of s. 689.071, F.S., to a newly-created section, s. 689.073, F.S., which will remain equally applicable to any conveyance containing deed powers to a trustee of any trust.
- Codifies a number of land trust practices and principles commonly used in Florida and Illinois which are derived from judicial precedents or treatises on land trusts.¹⁴

Purchaser Protection Provision transferred to Section 689.073, F.S.

The bill transfers and amends the purchaser protection provisions in ss. 689.071(3), (4), and (5), F.S., to newly-created s. 689.073, F.S.

The existing ss. 689.071(3), (4), and (5), F.S., are that are transferred to s. 689.073, F.S., are intended to have exactly the same legal effect: the provisions protect a purchaser who buys or leases land from a trustee if the trustee acquired the land by a recorded deed or other instrument that granted certain powers “deed powers” to the trustee. If those deed powers are recorded, then the statute protects the purchaser by confirming that:

- The trustee is vested with title to the property and is fully able to transfer the title to the purchaser;
- The purchaser is protected from title assaults by the beneficiaries of the trust;

⁹ Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 1.

¹⁰ Section 689.071, F.S.

¹¹ Chapter 736, F.S.

¹² Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 1.

¹³ Chapter 736, F.S.

¹⁴ Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 1. By codifying the land trust practices, it will facilitate and encourage the use of land trusts in Florida real property transactions. *Id.*

- The beneficiaries need not be disclosed;
- The trust document need not be disclosed; and
- The purchaser may safely deal with the trustee without inquiring whether the trustee has authority to deal with the land.¹⁵

The new statute deletes language that vests both legal and equitable title in the trustee; removes a reference to real property “in this state” in the current law, thereby confirming that out-of-state lands may be held in Florida land trusts.¹⁶ Additionally, the new statute requires that the statute apply without regard to whether any reference is made in the recorded instrument to the beneficiaries of such trust or to any separate collateral unrecorded declarations or agreements, without regard to the provisions of any unrecorded trust agreement or declaration of trust, and without regard to whether the trust is governed by the Florida Land Trust Act or the Florida Trust Code. This statute applies both to recorded instruments that are recorded after the effective date of this bill and to recorded instruments that were previously recorded and governed by similar provisions contained in s. 689.071(3), F.S. (2012). The statute validates all previous conveyances as vesting the trustee with the requisite deed powers.

Definition of Land Trust under s. 689.071(2), F.S.

The bill revises the remaining provisions of s. 689.071, F.S., which were not moved to the newly-created s. 689.073, F.S. The revised definition of land trust in s. 689.071(2)(c), F.S., still requires a conveyance to a trustee by a recorded instrument containing deed powers, but beginning with the effective date of the bill, this definition focuses on the key functional distinction between land trust and other express trusts. Under a land trust, a land trustee functions almost entirely as the agent of the beneficiaries or the person holding the power of directions under the trust agreement. Whereas, a trustee who is subject to the Florida Trust Code in ch. 736, F.S., has more extensive fiduciary duties and responsibilities to the trust beneficiaries, along with more extensive potential liability if the trustee fails to perform the trustee’s discretionary duties prudently.¹⁷

A land trustee has a fiduciary relationship to the land trust beneficiaries and the person holding the power of direction over the actions of the land trustee, just as any agent is bound a fiduciary to the principal for whom the agent acts.¹⁸ In practice, land trustees are rarely delegated discretionary duties under a land trust agreement, beyond ministerial and administrative matters.¹⁹ This lack of duties is a logical parallel to the exemption that land trustees enjoy from ch. 736, F.S., responsibilities and liabilities.²⁰ The bill makes clear this practical distinction in the revised definition of a land trust in s. 689.071(2)(c), F.S., by stating that the trustee has limited duties as specified in the statute.²¹

¹⁵ Correspondence from the Real Property, Probate, and Trust Law Section of The Florida Bar (on file with the Senate Committee on Judiciary).

¹⁶ Real Property, Probate and Trust Law Section of The Florida Bar, *supra* note 1.

¹⁷ *Id.*

¹⁸ *Id.* See also, *Raborn v. Menotte*, 974 So. 2d 328 (Fla. 2008).

¹⁹ *Id.* See also, “The trustee is a mere vessel of title.” *Brigham v. Brigham*, 11 So. 3d 374, 385 (Fla. 3d DCA 2009).

²⁰ Real Property, Probate and Trust Law Section of The Florida Bar, *supra* note 1.

²¹ *Id.*

For trust created on or after the effective date of the bill, the revised definition limits the duties of a trustee of a land trust to:

- The duty to exercise the trustee’s deed powers as directed by the beneficiary or by the holder of the power of direction (the agent’s fiduciary duty to follow the principal’s directions);
- The duty to dispose of the trust property at the termination of the trust;
- The duty to perform ministerial and administrative functions delegated to the trustee; and
- The duties required of certain timeshare trustees by ch. 721, F.S.²²

If the trustee’s duties exceed the foregoing limited duties and the trust is created after the effective date of the bill, then the trust will not be treated as a land trust and will not be excluded from the operation of the Florida Trust Code.²³ Because the purchaser protection provisions of the statute operate on any conveyance containing deed powers, the classification of the trust as a land trust will have no effect on the title to any real property held by the trustee.²⁴

Other Definitions

The bill revises the definition for “holder of the power of direction” to “power of direction”. The phrase, “person or entity” is shortened to “person.”

The bill creates new definitions for some basic trust concepts, such as “trust agreement,” “trust property,” and “recorded instrument.” “Trustee” is redefined to mean the trustee of a land trust or the trustee of another trust. Numerous references to “trustee” in s. 689.071, F.S., are revised in the bill to specifically refer to “trustee of a land trust” where appropriate.

Vesting of Legal and Equitable Title Revisions to s. 689.071(3), F.S.

The bill continues the existing statutory statement that a land trustee is vested with both legal and equitable title to the trust property. This concept does not appear in the transferred purchaser protection provisions in s. 689.073, created in the bill because it universally applies to any type of trust with deed powers.²⁵

The bill makes technical revisions to s. 689.071(3), F.S., to maintain a consistent use of defined terms such as “land trust,” trust agreement,” and “trust property.”

Statute of Uses and Doctrine of Merger – Revisions to ss. 689.071(4) and (5), F.S.

When s. 689.071, F.S., was first enacted for the purpose of validating the use of Illinois land trusts in Florida, one commonly assumed result was that land trusts would not be executed as “passive trusts” or “dry trusts” by the statute of uses, which is codified in Florida in s. 689.09,

²² *Id.* Section 721.08, F.S., provides that time-share accommodations may be placed into a trust.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

F.S.²⁶ The bill makes that result explicit with respect to a land trust, overriding not only s. 689.09, F.S., but also the common-law statute of uses.²⁷

New subsection 689.071(5), F.S., overrides the doctrine of merger with respect to a land trust, so that a land trust will not be extinguished if the trustee is the sole beneficiary.²⁸

Personal Property Option

Currently s. 689.071, F.S., provides that the recorded instrument may define and declare the interests of land trust beneficiaries as personal property under Florida law. The bill clarifies that this designation of personal property must be made in the recorded instrument or the trust agreement, or it will be considered real property. Subsection 689.071(6), F.S., is modified to allow the optional personal property declaration to be made in the recorded instrument or in the trust agreement.

Beneficiary Provisions

Currently, customary provisions in land trusts are based upon treatises by Illinois land trust authorities. The bill revises s. 689.071(8), F.S., in a number of respects to codify these land trust practices.²⁹

The bill adds s. 689.071(8)(b), F.S., as a statutory endorsement of flexible beneficial ownership techniques described in the *Kenoe* treatise.³⁰ The purpose of including these provisions directly in the Florida Land Trust Act is to increase public awareness that such techniques are available without making reference to the treatise, thereby promoting the usage of land trusts in Florida generally.³¹

The bill revises s. 689.071(8)(c), F.S., to reconcile the Florida Land Trust Act with the Uniform Commercial Code Article 9 exclusion of interests in real property.³² Caselaw³³ holds that a beneficial interest in a land trust is a general intangible within the scope of the Florida Uniform Commercial Code, and this result is codified in the present version of s. 689.071(8)(c), F.S., which provides that Uniform Commercial Code Article 9 governs the perfection of a security interest in a beneficial interest in a land trust. However, if the beneficial interest is defined as real property under s. 689.071(6), F.S., then there is a possible contradiction between the Florida Land Trust Act (which says Article 9 applies to beneficial interests) and the Uniform Commercial Code (which says Article 9 excludes real property interests).

The Florida Vacation Plan and Timeshare Act³⁴ authorizes the creation and marketing of timeshare estates through trusts.³⁵ Because timeshare estates are defined as real property,³⁶ the

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* Henry W. Kenoe wrote a number of treatises on land trusts. *Id.*

³¹ *Id.*

³² These provisions are found in s. 679.1091(4)(k), F.S.

³³ *In re Cowsert*, 14 B.R. 335 (Bankr.S.D.Fla. 1981).

³⁴ Chapter 721, F.S.

purchasers of Florida timeshare estates typically finance their purchase with a mortgage recorded against the timeshare estate. However, if the timeshare estate is created as a beneficial interest in a timeshare trust a land trust is created. As a result, two different statutes prescribe two different methods of perfection, causing possible confusion in the mechanics of perfecting the lien.³⁷

The bill revises s. 689.071(8)(c), F.S., to resolve this apparent contradiction by clarifying that the Uniform Commercial Code governs perfection if the beneficial interest in a land trust is declared to be personal property (as was the case in *Cowsert*), but that a mortgage instrument recorded in the real estate records is the proper method of perfection if the beneficial interest in a land trust is declared to be real property. If real property is involved, the proper county for recording the mortgage may be specified in the recorded instrument or in a declaration of trust or memorandum that is recorded in the same county as the recorded instrument; otherwise the location of the trust property determines the proper county for recording the mortgage. The bill provides a transition rule to provide for the continuation of perfection for any Uniform Commercial Code financing statement that may have been filed before the effective date of this clarification.³⁸ It is an abbreviated version of the transition rules that were included in Revised Uniform Commercial Code Article 9 in 2001.³⁹

The bill revises s. 689.071(8)(c), F.S., to state more clearly that a lien or security interest perfected against a beneficial interest in a land trust does not affect in any way the legal or equitable title of the land trustee to the trust property. Section 689.071(8)(d), F.S., is amended to make explicit a concept that is inherent in a beneficiary's ability to encumber a beneficial interest as described in existing s. 689.071(8)(c), F.S. The trustee's legal and equitable title to the trust property is separate and distinct from the beneficiary's beneficial interest in the land trust and the trust property. A lien, judgment, mortgage, security interest or other encumbrance against one interest does not automatically attach to the other interest. Section 689.071(8)(e), F.S., is also revised to clarify this same point. Documents recorded by a beneficiary to transfer or encumber a beneficial interest do not affect the legal and equitable title of the trustee or the deed powers granted to the trustee in the recorded instrument.

The bill adds s. 689.071(8)(i), F.S., which is intended to end the reported occasional practice by some judges of appointing a guardian ad litem to represent the interests of land trust beneficiaries in a foreclosure or other litigation affecting title to the trust property.⁴⁰ Because a land trustee is vested with both legal and equitable title to the trust property, joinder of the land trustee in the action is sufficient without a party incurring the additional expense of a guardian ad litem.⁴¹

Successor Trustee Provisions – Revisions to s. 689.071(9), F.S.

The use of “each and every successor trustee” is substituted in s. 689.071(9), F.S., for the shorter expression: “each successor trustee.”

³⁵ See s. 721.08(2)(c)4, F.S.

³⁶ See s. 721.05(34), F.S.,

³⁷ The conflict exists between the Uniform Commercial Code Article 9 and the Florida Land Trust Act.

³⁸ Real Property, Probate and Trust Law Section of The Florida Bar, *supra* note 1.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

The bill redesignates the existing paragraph 689.071(9)(f), F.S., as paragraph 689.071(9)(e), F.S., to provide that a trust agreement may authorize, in addition to beneficiaries, the person holding the power of direction, to direct the land trustee to convey the trust property to another trustee.

Trustee as a Creditor

The bill amends s. 689.071(10)(a), F.S., to include a reference to a mortgage and a security interest against a beneficial interest in a land trust to conform to other changes in the bill.

Notice to Trustee Provisions – Revisions to s. 689.071(11), F.S.

The bill adds a new s. 689.071(11), F.S., to assure that the right parties receive any third-party notices concerning property held in a land trust by requiring that notice to a land trustee include certain identifying information if it appears in the recorded instrument.

Transition Rule Provision; Timeshare Trusts- Revisions to s. 689.071(12), F.S.

The revised definition of “land trust” in the bill contains a cross-reference to a transition rule that appears in s. 689.071(12), F.S. This transition rule exempts existing land trusts from the new duties-based test in s. 689.071(2)(c), F.S.; rather, an existing trust is a land trust (or not) based on the intentions expressed in (or discernible from) the existing trust agreement.⁴² As a practical matter, the overwhelming majority of existing land trusts sharply curtail the discretionary duties of the land trustee, such that those existing trusts would meet the new duties-based “land trust” definition even if it were applied to them retroactively.⁴³ But, because there are some land trust agreements that vest the land trustee with greater discretion, the transition rule provision does not apply the duties-based test to any existing land trust agreement that says the trust is a “land trust” or clearly was intended to be a land trust.⁴⁴ In this way, existing obvious land trusts are “grandfathered” into the land trust statute.⁴⁵

There are two necessary exceptions to the transition rule provision: (1) if it is not obvious from reading the existing trust agreement that the parties intended to create a land trust, then the duties-based test applies; and (2) if an existing land trust agreement is amended to add or expand duties of the trustee, then the duties-based test is applied only to the added or expanded duties that were not found in the trust agreement before the effective date of the amended act. In either case, if the trustee has or adds too many duties beyond those in the land trust definition, the result is that the trustee becomes subject to the tougher trustee standards of ch. 736, F.S., but there is no effect on the title to the trust property.

As noted above in the discussion of timeshare interests, current statutes⁴⁶ authorize the use of trusts for the creation and marketing of timeshare estates and specify similar requirements for

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Chapter 721, F.S.

using trusts for multi-site vacation clubs.⁴⁷ These statutes specify that certain provisions of the Florida Trust Code govern the liability of the trustees of such qualifying trusts,⁴⁸ and these provisions are usually recited in the ch. 721, F.S., trust agreements. If such an existing timeshare trust were created as a land trust, however, then the trust agreement would contain provisions stating that the trust is a land trust (making it a land trust)⁴⁹ and would also refer to governance by ch. 736, F.S.

Florida Trust Code – Revisions to s. 736.0102, F.S.

The bill includes a conforming amendment to s. 736.0102, F.S., of the Florida Trust Code. The bill divides this section into two subsections, and a third subsection is added to address the exclusion of land trusts from the Florida Trust Code. The newly-created s. 736.0102(3), F.S., provides that the Trust Code does not apply to land trusts under s. 689.071, F.S., except to the extent provided in s. 689.071(7), F.S., of the Land Trust Act and in the two provisions of ch. 721, F.S., that apply parts of ch. 736, F.S., to timeshare trusts.

Effective date

The bill directs the Division of Law Revision and Information to replace the phrase “effective date of the act” wherever it occurs in this bill with such date.

The bill takes effect upon becoming a law.

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.

⁴⁷ Section 721.53(1)(e), F.S.

⁴⁸ See specifically, ss. 736.08125, 736.08163, 736.1013, and 736.1015, F.S.

⁴⁹ See s. 689.071(14)(b)1, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on March 12, 2013:

The committee substitute clarifies that certain statutory cross-references are to the Florida Statutes 2012.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Simmons

590-02267-13

20131172c1

1 A bill to be entitled
 2 An act relating to land trusts; creating s. 689.073,
 3 F.S., and transferring, renumbering, and amending s.
 4 689.071(4) and (5), F.S.; providing requirements
 5 relating to vesting of ownership in a trustee;
 6 providing exclusion and applicability; amending s.
 7 689.071, F.S.; revising and providing definitions;
 8 revising provisions relating to land trust transfers
 9 of real property and vesting of ownership in a
 10 trustee; prohibiting the operation of the statute of
 11 uses to execute a land trust or to vest the trust
 12 property under certain conditions; prohibiting the
 13 operation of the doctrine of merger to execute a land
 14 trust or to vest the trust property under certain
 15 conditions; providing conditions under which a
 16 beneficial interest is deemed real property; revising
 17 and providing rights, liabilities, and duties of land
 18 trust beneficiaries; authorizing certain beneficial
 19 ownership methods; providing for the perfection of
 20 security documents; providing that a trustee's legal
 21 and equitable title to the trust property is separate
 22 and distinct from the beneficiary's beneficial
 23 interest in the land trust and the trust property;
 24 prohibiting a lien, judgment, mortgage, security
 25 interest, or other encumbrance against one interest
 26 from automatically attaching to another interest;
 27 providing that the appointment of a guardian ad litem
 28 is not necessary in certain foreclosure litigation
 29 affecting the title to trust property of a land trust;

Page 1 of 21

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

590-02267-13

20131172c1

30 conforming provisions to changes made by the act;
 31 deleting provisions relating to the applicability of
 32 certain successor trustee provisions; providing notice
 33 requirements; providing for the determination of
 34 applicable law for certain trusts; providing for
 35 applicability relating to Uniform Commercial Code
 36 financing statements; providing requirements for
 37 recording effectiveness; amending s. 736.0102, F.S.;
 38 revising and providing scope of the Florida Trust
 39 Code; providing a directive to the Division of Law
 40 Revision and Information; providing an effective date.

41
 42 Be It Enacted by the Legislature of the State of Florida:

43
 44 Section 1. Section 689.073, Florida Statutes, is created,
 45 and present subsections (4) and (5) of section 689.071, Florida
 46 Statutes, are transferred and renumbered as subsections (2) and
 47 (3), respectively, of section 689.073, Florida Statutes, and
 48 amended, to read:

49 689.073 Powers conferred on trustee in recorded
 50 instrument.—

51 (1) OWNERSHIP VESTS IN TRUSTEE.—Every conveyance, deed,
 52 mortgage, lease assignment, or other instrument heretofore or
 53 hereafter made, hereinafter referred to as the "recorded
 54 instrument," transferring any interest in real property,
 55 including, but not limited to, a leasehold or mortgagee
 56 interest, to any person or any corporation, bank, trust company,
 57 or other entity duly formed under the laws of its state of
 58 qualification, which recorded instrument designates the person,

Page 2 of 21

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

590-02267-13

20131172c1

59 corporation, bank, trust company, or other entity "trustee" or
 60 "as trustee" and confers on the trustee the power and authority
 61 to protect, to conserve, to sell, to lease, to encumber, or
 62 otherwise to manage and dispose of the real property described
 63 in the recorded instrument, is effective to vest, and is
 64 declared to have vested, in such trustee full power and
 65 authority as granted and provided in the recorded instrument to
 66 deal in and with such property, or interest therein or any part
 67 thereof, held in trust under the recorded instrument.

68 (2) (4) NO DUTY TO INQUIRE.—Any grantee, mortgagee, lessee,
 69 transferee, assignee, or person obtaining satisfactions or
 70 releases or otherwise in any way dealing with the trustee with
 71 respect to the real property or any interest in such property
 72 held in trust under the recorded instrument, as hereinabove
 73 provided for, is not obligated to inquire into the
 74 identification or status of any named or unnamed beneficiaries,
 75 or their heirs or assigns to whom a trustee may be accountable
 76 under the terms of the recorded instrument, or under any
 77 unrecorded separate declarations or agreements collateral to the
 78 recorded instrument, whether or not such declarations or
 79 agreements are referred to therein; or to inquire into or
 80 ascertain the authority of such trustee to act within and
 81 exercise the powers granted under the recorded instrument; or to
 82 inquire into the adequacy or disposition of any consideration,
 83 if any is paid or delivered to such trustee in connection with
 84 any interest so acquired from such trustee; or to inquire into
 85 any of the provisions of any such unrecorded declarations or
 86 agreements.

87 (3) (5) BENEFICIARY CLAIMS.—All persons dealing with the

Page 3 of 21

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

590-02267-13

20131172c1

88 trustee under the recorded instrument as hereinabove provided
 89 take any interest transferred by the trustee thereunder, within
 90 the power and authority as granted and provided therein, free
 91 and clear of the claims of all the named or unnamed
 92 beneficiaries of such trust, and of any unrecorded declarations
 93 or agreements collateral thereto whether referred to in the
 94 recorded instrument or not, and of anyone claiming by, through,
 95 or under such beneficiaries. However, this section does not
 96 prevent a beneficiary of any such unrecorded collateral
 97 declarations or agreements from enforcing the terms thereof
 98 against the trustee.

99 (4) EXCLUSION.—This section does not apply to any deed,
 100 mortgage, or other instrument to which s. 689.07 applies.

101 (5) APPLICABILITY.—The section applies without regard to
 102 whether any reference is made in the recorded instrument to the
 103 beneficiaries of such trust or to any separate collateral
 104 unrecorded declarations or agreements, without regard to the
 105 provisions of any unrecorded trust agreement or declaration of
 106 trust, and without regard to whether the trust is governed by s.
 107 689.071 or chapter 736. This section applies both to recorded
 108 instruments that are recorded after the effective date of this
 109 act and to recorded instruments that were previously recorded
 110 and governed by similar provisions contained in s. 689.071(3),
 111 Florida Statutes 2012, and any such recorded instrument
 112 purporting to confer power and authority on a trustee under such
 113 provisions of s. 689.071(3), Florida Statutes 2012, is valid and
 114 has the effect of vesting full power and authority in such
 115 trustee as provided in this section.

116 Section 2. Section 689.071, Florida Statutes, as amended by

Page 4 of 21

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

590-02267-13

20131172c1

117 this act, is amended to read:

118 689.071 Florida Land Trust Act.—

119 (1) SHORT TITLE.—This section may be cited as the “Florida
120 Land Trust Act.”

121 (2) DEFINITIONS.—As used in this section, the term:

122 (a) “Beneficial interest” means any interest, vested or
123 contingent and regardless of how small or minimal such interest
124 may be, in a land trust which is held by a beneficiary.

125 (b) “Beneficiary” means any person or entity having a
126 beneficial interest in a land trust. A trustee may be a
127 beneficiary of the land trust for which such trustee serves as
128 trustee.

129 ~~(c) “Holder of the power of direction” means any person or~~
130 ~~entity having the authority to direct the trustee to convey~~
131 ~~property or interests, execute a mortgage, distribute proceeds~~
132 ~~of a sale or financing, and execute documents incidental to the~~
133 ~~administration of a land trust.~~

134 (c)(d) “Land trust” means any express written agreement or
135 arrangement by which a use, confidence, or trust is declared of
136 any land, or of any charge upon land, under which the title to
137 real property, including, but not limited to, a leasehold or
138 mortgagee interest, both legal and equitable, is vested in a
139 trustee by a recorded instrument that confers on the trustee the
140 power and authority prescribed in s. 689.073(1) and under which
141 the trustee has no duties other than the following:

142 1. The duty to convey, sell, lease, mortgage, or deal with
143 the trust property, or to exercise such other powers concerning
144 the trust property as may be provided in the recorded
145 instrument, in each case as directed by the beneficiaries or by

590-02267-13

20131172c1

146 the holder of the power of direction;

147 2. The duty to sell or dispose of the trust property at the
148 termination of the trust;

149 3. The duty to perform ministerial and administrative
150 functions delegated to the trustee in the trust agreement or by
151 the beneficiaries or the holder of the power of direction; or

152 4. The duties required of a trustee under chapter 721, if
153 the trust is a timeshare estate trust complying with s.
154 721.08(2)(c)4. or a vacation club trust complying with s.
155 721.53(1)(e);

156
157 however, the duties of the trustee of a land trust created
158 before the effective date of this act may exceed the limited
159 duties listed in this paragraph to the extent authorized in
160 subsection (12) subsection (3). The recorded instrument does not
161 itself create an entity, regardless of whether the relationship
162 among the beneficiaries and the trustee is deemed to be an
163 entity under other applicable law.

164 (d) “Power of direction” means the authority of a person,
165 as provided in the trust agreement, to direct the trustee of a
166 land trust to convey property or interests, execute a lease or
167 mortgage, distribute proceeds of a sale or financing, and
168 execute documents incidental to the administration of a land
169 trust.

170 (e) “Recorded instrument” has the same meaning as provided
171 in s. 689.073(1).

172 (f) “Trust agreement” means the written agreement governing
173 a land trust or other trust, including any amendments.

174 (g) “Trust property” means any interest in real property,

590-02267-13 20131172c1

175 including, but not limited to, a leasehold or mortgagee
 176 interest, conveyed by a recorded instrument to a trustee of a
 177 land trust or other trust.

178 ~~(h)(e)~~ "Trustee" means the person ~~or entity~~ designated in a
 179 recorded instrument or trust agreement ~~trust instrument~~ to hold
 180 ~~legal and equitable~~ title to the trust property of a land trust
 181 or other trust.

182 (3) OWNERSHIP VESTS IN TRUSTEE.—Every recorded instrument
 183 ~~conveyance, deed, mortgage, lease assignment, or other~~
 184 ~~instrument heretofore or hereafter made, hereinafter referred to~~
 185 ~~as the "recorded instrument,"~~ transferring any interest in real
 186 property to the trustee of a land trust and conferring upon the
 187 trustee the power and authority prescribed in s. 689.073(1), in
 188 ~~this state, including, but not limited to, a leasehold or~~
 189 ~~mortgagee interest, to any person or any corporation, bank,~~
 190 ~~trust company, or other entity duly formed under the laws of its~~
 191 ~~state of qualification, in which recorded instrument the person,~~
 192 ~~corporation, bank, trust company, or other entity is designated~~
 193 ~~"trustee" or "as trustee,"~~ whether or not reference is made in
 194 the recorded instrument to the beneficiaries of such land trust
 195 or to the trust agreement or any separate collateral unrecorded
 196 declarations or agreements, is effective to vest, and is hereby
 197 declared to have vested, in such trustee both legal and
 198 equitable title, and full rights of ownership, over the trust
 199 ~~real~~ property or interest therein, with full power and authority
 200 as granted and provided in the recorded instrument to deal in
 201 and with the trust property or interest therein or any part
 202 thereof. The recorded instrument does not itself create an
 203 entity, regardless of whether the relationship among the

Page 7 of 21

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

590-02267-13 20131172c1

204 beneficiaries and the trustee is deemed to be an entity under
 205 other applicable law; provided, the recorded instrument confers
 206 ~~on the trustee the power and authority to protect, to conserve,~~
 207 ~~to sell, to lease, to encumber, or otherwise to manage and~~
 208 ~~dispose of the real property described in the recorded~~
 209 ~~instrument.~~

210 (4) STATUTE OF USES INAPPLICABLE.—Section 689.09 and the
 211 statute of uses do not execute a land trust or vest the trust
 212 property in the beneficiary or beneficiaries of the land trust,
 213 notwithstanding any lack of duties on the part of the trustee or
 214 the otherwise passive nature of the land trust.

215 (5) DOCTRINE OF MERGER INAPPLICABLE.—The doctrine of merger
 216 does not extinguish a land trust or vest the trust property in
 217 the beneficiary or beneficiaries of the land trust, regardless
 218 of whether the trustee is the sole beneficiary of the land
 219 trust.

220 (6) PERSONAL PROPERTY.—In all cases in which the recorded
 221 instrument or the trust agreement, as hereinabove provided,
 222 contains a provision defining and declaring the interests of
 223 beneficiaries of a land trust thereunder to be personal property
 224 only, such provision is ~~shall be~~ controlling for all purposes
 225 when such determination becomes an issue under the laws or in
 226 the courts of this state. If no such personal property
 227 designation appears in the recorded instrument or in the trust
 228 agreement, the interests of the land trust beneficiaries are
 229 real property.

230 (7) TRUSTEE LIABILITY.—In addition to any other limitation
 231 on personal liability existing pursuant to statute or otherwise,
 232 the provisions of ss. 736.08125 and 736.1013 apply to the

Page 8 of 21

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

590-02267-13

20131172c1

233 trustee of a land trust created pursuant to this section.

234 (8) LAND TRUST BENEFICIARIES.—

235 (a) Except as provided in this section, the beneficiaries
236 of a land trust are not liable, solely by being beneficiaries,
237 under a judgment, decree, or order of court or in any other
238 manner for a debt, obligation, or liability of the land trust.

239 ~~(b)~~ Any beneficiary acting under the trust agreement of a
240 land trust is not liable to the land trust's trustee or to any
241 other beneficiary for the beneficiary's good faith reliance on
242 the provisions of the trust agreement. A beneficiary's duties
243 and liabilities under a land trust may be expanded or restricted
244 in a trust agreement or beneficiary agreement.

245 (b)1. If provided in the recorded instrument, in the trust
246 agreement, or in a beneficiary agreement:

247 a. A particular beneficiary may own the beneficial interest
248 in a particular portion or parcel of the trust property of a
249 land trust;

250 b. A particular person may be the holder of the power of
251 direction with respect to the trustee's actions concerning a
252 particular portion or parcel of the trust property of a land
253 trust; and

254 c. The beneficiaries may own specified proportions or
255 percentages of the beneficial interest in the trust property or
256 in particular portions or parcels of the trust property of a
257 land trust.

258 2. Multiple beneficiaries may own a beneficial interest in
259 a land trust as tenants in common, joint tenants with right of
260 survivorship, or tenants by the entireties.

261 (c) If a beneficial interest in a land trust is determined

590-02267-13

20131172c1

262 to be personal property as provided in subsection (6), chapter
263 679 applies to the perfection of any security interest in that ~~e~~
264 beneficial interest in a land trust. If a beneficial interest in
265 a land trust is determined to be real property as provided in
266 subsection (6), then to perfect a lien or security interest
267 against that beneficial interest, the mortgage, deed of trust,
268 security agreement, or other similar security document must be
269 recorded in the public records of the county that is specified
270 for such security documents in the recorded instrument or in a
271 declaration of trust or memorandum of such declaration of trust
272 recorded in the public records of the same county as the
273 recorded instrument. If no county is so specified for recording
274 such security documents, the proper county for recording such a
275 security document against a beneficiary's interest in any trust
276 property is the county where the trust property is located. The
277 perfection of a lien or security interest in a beneficial
278 interest in a land trust does not affect, attach to, or encumber
279 the legal or equitable title of the trustee in the trust
280 property and does not impair or diminish the authority of the
281 trustee under the recorded instrument, and parties dealing with
282 the trustee are not required to inquire into the terms of the
283 unrecorded trust agreement or any lien or security interest
284 against a beneficial interest in the land trust.

285 (d) The trustee's legal and equitable title to the trust
286 property of a land trust is separate and distinct from the
287 beneficial interest of a beneficiary in the land trust and in
288 the trust property. A lien, judgment, mortgage, security
289 interest, or other encumbrance attaching to the trustee's legal
290 and equitable title to the trust property of a land trust does

590-02267-13 20131172c1

291 not attach to the beneficial interest of any beneficiary; and
 292 any lien, judgment, mortgage, security interest, or other
 293 encumbrance against a beneficiary or beneficial interest does
 294 not attach to the legal or equitable title of the trustee to the
 295 trust property held under a land trust, unless the lien,
 296 judgment, mortgage, security interest, or other encumbrance by
 297 its terms or by operation of other law attaches to both the
 298 interest of the trustee and the interest of such beneficiary. A
 299 ~~beneficiary's duties and liabilities may be expanded or~~
 300 ~~restricted in a trust agreement or beneficiary agreement.~~

301 (e) Any subsequent document appearing of record in which a
 302 beneficiary of a land trust transfers or encumbers any the
 303 beneficial interest in the land trust does not transfer or
 304 encumber the legal or equitable title of the trustee to the
 305 trust property and does not diminish or impair the authority of
 306 the trustee under the terms of the recorded instrument. Parties
 307 dealing with the trustee of a land trust are not required to
 308 inquire into the terms of the unrecorded trust agreement.

309 (f) ~~The An unrecorded~~ trust agreement ~~giving rise to a~~
 310 ~~recorded instrument~~ for a land trust may provide that one or
 311 more persons ~~or entities~~ have the power to direct the trustee to
 312 convey property or interests, execute a mortgage, distribute
 313 proceeds of a sale or financing, and execute documents
 314 incidental to administration of the land trust. The power of
 315 direction, unless provided otherwise in the ~~land~~ trust agreement
 316 of the land trust, is conferred upon the holders of the power
 317 for the use and benefit of all holders of any beneficial
 318 interest in the land trust. In the absence of a provision in the
 319 ~~land~~ trust agreement of a land trust to the contrary, the power

Page 11 of 21

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

590-02267-13 20131172c1

320 of direction shall be in accordance with the percentage of
 321 individual ownership. In exercising the power of direction, the
 322 holders of the power of direction are presumed to act in a
 323 fiduciary capacity for the benefit of all holders of any
 324 beneficial interest in the land trust, unless otherwise provided
 325 in the ~~land~~ trust agreement. A beneficial interest in a land
 326 trust is indefeasible, and the power of direction may not be
 327 exercised so as to alter, amend, revoke, terminate, defeat, or
 328 otherwise affect or change the enjoyment of any beneficial
 329 interest in a land trust.

330 (g) A land trust ~~relating to real estate~~ does not fail, and
 331 any use relating to the trust property ~~real estate~~ may not be
 332 defeated, because beneficiaries are not specified by name in the
 333 recorded instrument ~~deed of conveyance~~ to the trustee or because
 334 duties are not imposed upon the trustee. The power conferred by
 335 any recorded instrument ~~deed of conveyance~~ on a trustee of a
 336 land trust to sell, lease, encumber, or otherwise dispose of
 337 property described in the recorded instrument ~~deed~~ is effective,
 338 and a person dealing with the trustee of a land trust is not
 339 required to inquire any further into the right of the trustee to
 340 act or the disposition of any proceeds.

341 (h) The principal residence of a beneficiary shall be
 342 entitled to the homestead tax exemption even if the homestead is
 343 held by a trustee in a land trust, provided the beneficiary
 344 qualifies for the homestead exemption under chapter 196.

345 (i) In a foreclosure against trust property or other
 346 litigation affecting the title to trust property of a land
 347 trust, the appointment of a guardian ad litem is not necessary
 348 to represent the interest of any beneficiary.

Page 12 of 21

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

590-02267-13

20131172c1

349 (9) SUCCESSOR TRUSTEE.-

350 ~~(a) The provisions of s. 736.0705 relating to the~~
 351 ~~resignation of a trustee do not apply to the appointment of a~~
 352 ~~successor trustee under this section.~~

353 ~~(a)(b)~~ If the recorded instrument and the unrecorded ~~land~~
 354 trust agreement are silent as to the appointment of a successor
 355 trustee of a land trust in the event of the death, incapacity,
 356 resignation, or termination due to dissolution of a ~~land~~ trustee
 357 or if a ~~land~~ trustee is unable to serve as trustee of a land
 358 trust, one or more persons ~~or entities~~ having the power of
 359 direction ~~of the land trust agreement~~ may appoint a successor
 360 trustee or trustees of the land trust by filing a declaration of
 361 appointment of a successor trustee or trustees in the public
 362 records of office of the recorder of deeds in the county in
 363 which the trust property is located. The declaration must be
 364 signed by a beneficiary or beneficiaries of the land trust and
 365 by the each successor trustee or trustees, must be acknowledged
 366 in the manner provided for acknowledgment of deeds, and must
 367 contain:

- 368 1. The legal description of the trust property.
- 369 2. The name and address of the former trustee.
- 370 3. The name and address of the each successor trustee or
 371 trustees.

372 4. A statement that ~~each successor trustee has been~~
 373 ~~appointed by~~ one or more persons ~~or entities~~ having the power of
 374 direction of the land trust appointed the successor trustee or
 375 trustees, together with an acceptance of appointment by the each
 376 successor trustee or trustees.

377 ~~(b)(c)~~ If the recorded instrument is silent as to the

590-02267-13

20131172c1

378 appointment of a successor trustee or trustees of a land trust
 379 but an unrecorded ~~land~~ trust agreement provides for the
 380 appointment of a successor trustee or trustees in the event of
 381 the death, incapacity, resignation, or termination due to
 382 dissolution of the ~~land~~ trustee, of a land trust, then upon the
 383 appointment of any successor trustee pursuant to the terms of
 384 the unrecorded ~~land~~ trust agreement, ~~the each~~ successor trustee
 385 or trustees shall file a declaration of appointment of a
 386 successor trustee in the public records of office of the
 387 ~~recorder of deeds~~ in the county in which the trust property is
 388 located. The declaration must be signed by both the former
 389 trustee and the each successor trustee or trustees, must be
 390 acknowledged in the manner provided for acknowledgment of deeds,
 391 and must contain:

- 392 1. The legal description of the trust property.
- 393 2. The name and address of the former trustee.
- 394 3. The name and address of the successor trustee or
 395 trustees.
- 396 4. A statement of resignation by the former trustee and a
 397 statement of acceptance of appointment by the each successor
 398 trustee or trustees.
- 399 5. A statement that ~~the each~~ successor trustee or trustees
 400 were ~~was~~ duly appointed under the terms of the unrecorded ~~land~~
 401 trust agreement.

402
 403 If the appointment of any successor trustee of a land trust is
 404 due to the death or incapacity of the former trustee, the
 405 declaration need not be signed by the former trustee and a copy
 406 of the death certificate or a statement that the former trustee

590-02267-13 20131172c1

407 is incapacitated or unable to serve must be attached to or
408 included in the declaration, as applicable.

409 ~~(c)(d)~~ If the recorded instrument provides for the
410 appointment of any successor trustee of a land trust and any
411 successor trustee is appointed in accordance with the recorded
412 instrument, no additional declarations of appointment of any
413 successor trustee are required under this section.

414 ~~(d)(e)~~ Each successor ~~land~~ trustee appointed with respect
415 to a land trust is fully vested with all the estate, properties,
416 rights, powers, trusts, duties, and obligations of the
417 predecessor ~~land~~ trustee, except that any successor ~~land~~ trustee
418 of a land trust is not under any duty to inquire into the acts
419 or omissions of a predecessor trustee and is not liable for any
420 act or failure to act of a predecessor trustee. A person dealing
421 with any successor trustee of a land trust pursuant to a
422 declaration filed under this section is not obligated to inquire
423 into or ascertain the authority of the successor trustee to act
424 within or exercise the powers granted under the recorded
425 instruments or any unrecorded trust agreement ~~declarations or~~
426 ~~agreements~~.

427 ~~(e)(f)~~ A ~~land~~ trust agreement may provide that the trustee
428 of a land trust, when directed to do so by the holder of the
429 power of direction or by the beneficiaries of the land trust or
430 legal representatives of the beneficiaries, may convey the trust
431 property directly to another trustee on behalf of the
432 beneficiaries or to another representative named in such
433 directive ~~others named by the beneficiaries~~.

434 (10) TRUSTEE AS CREDITOR.—

435 (a) If a debt is secured by a security interest or mortgage

Page 15 of 21

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

590-02267-13 20131172c1

436 against ~~in~~ a beneficial interest in a land trust or by a
437 mortgage on ~~land~~ trust property of a land trust, the validity or
438 enforceability of the debt, security interest, or mortgage and
439 the rights, remedies, powers, and duties of the creditor with
440 respect to the debt or the security are not affected by the fact
441 that the creditor and the trustee are the same person ~~or entity~~,
442 and the creditor may extend credit, obtain any necessary
443 security interest or mortgage, and acquire and deal with the
444 property comprising the security as though the creditor were not
445 the trustee.

446 (b) A trustee of a land trust does not breach a fiduciary
447 duty to the beneficiaries, and it is not evidence of a breach of
448 any fiduciary duty owed by the trustee to the beneficiaries for
449 a trustee to be or become a secured or unsecured creditor of the
450 land trust, the beneficiary of the land trust, or a third party
451 whose debt to such creditor is guaranteed by a beneficiary of
452 the land trust.

453 (11) NOTICES TO TRUSTEE.—Any notice required to be given to
454 a trustee of a land trust regarding trust property by a person
455 who is not a party to the trust agreement must identify the
456 trust property to which the notice pertains or include the name
457 and date of the land trust to which the notice pertains, if such
458 information is shown on the recorded instrument for such trust
459 property.

460 (12) DETERMINATION OF APPLICABLE LAW.—Except as otherwise
461 provided in this section, chapter 736 does not apply to a land
462 trust governed by this section.

463 (a) A trust is not a land trust governed by this section if
464 there is no recorded instrument that confers on the trustee the

Page 16 of 21

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

590-02267-13 20131172c1

465 power and authority prescribed in s. 689.073(1).
 466 (b) For a trust created before the effective date of this
 467 act:
 468 1. The trust is a land trust governed by this section if a
 469 recorded instrument confers on the trustee the power and
 470 authority described in s. 689.073(1) and if:
 471 a. The recorded instrument or the trust agreement expressly
 472 provides that the trust is a land trust; or
 473 b. The intent of the parties that the trust be a land trust
 474 is discerned from the trust agreement or the recorded
 475 instrument;
 476 without regard to whether the trustee's duties under the trust
 477 agreement are greater than those limited duties described in s.
 478 689.071(2)(c).
 480 2. The trust is not a land trust governed by this section
 481 if:
 482 a. The recorded instrument or the trust agreement expressly
 483 provides that the trust is to be governed by chapter 736, or by
 484 any predecessor trust code or other trust law other than this
 485 section; or
 486 b. The intent of the parties that the trust be governed by
 487 chapter 736, or by any predecessor trust code or other trust law
 488 other than this section, is discerned from the trust agreement
 489 or the recorded instrument;
 490 without regard to whether the trustee's duties under the trust
 491 agreement are greater than those limited duties listed in s.
 492 689.071(2)(c), and without consideration of any references in
 493

Page 17 of 21

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

590-02267-13 20131172c1

494 the trust agreement to provisions of chapter 736 made applicable
 495 to the trust by chapter 721, if the trust is a timeshare estate
 496 trust complying with s. 721.08(2)(c)4. or a vacation club trust
 497 complying with s. 721.53(1)(e).
 498 3. Solely for the purpose of determining the law governing
 499 a trust under subparagraph 1. or subparagraph 2., the
 500 determination shall be made without consideration of any
 501 amendment to the trust agreement made on or after the effective
 502 date of this act, except as provided in paragraph (d).
 503 4. If the determination of whether a trust is a land trust
 504 governed by this section cannot be made under either
 505 subparagraph 1. or subparagraph 2., the determination shall be
 506 made under paragraph (c) as if the trust was created on or after
 507 the effective date of this act.
 508 (c) If a recorded instrument confers on the trustee the
 509 power and authority described in s. 689.073(1) and the trust was
 510 created on or after the effective date of this act, the trust
 511 shall be determined to be a land trust governed by this section
 512 only if the trustee's duties under the trust agreement,
 513 including any amendment made on or after such date, are greater
 514 than those limited duties described in s. 689.071(2)(c).
 515 (d) If the trust agreement for a land trust created before
 516 the effective date of this act is amended on or after such date
 517 to add to or increase the duties of the trustee beyond the
 518 duties provided in the trust agreement as of the effective date
 519 of this act, the trust shall remain a land trust governed by
 520 this section only if the additional or increased duties of the
 521 trustee implemented by the amendment are greater than those
 522 limited duties described in s. 689.071(2)(c).

Page 18 of 21

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

590-02267-13

20131172c1

523 (13) UNIFORM COMMERCIAL CODE TRANSITION RULE.—This section
 524 does not render ineffective any effective Uniform Commercial
 525 Code financing statement filed before July 1, 2014, to perfect a
 526 security interest in a beneficial interest in a land trust that
 527 is determined to be real property as provided in subsection (6),
 528 but such a financing statement ceases to be effective at the
 529 earlier of July 1, 2019, or the time the financing statement
 530 would have ceased to be effective under the law of the
 531 jurisdiction in which it is filed, and the filing of a Uniform
 532 Commercial Code continuation statement after July 1, 2014, does
 533 not continue the effectiveness of such a financing statement.
 534 The recording of a mortgage, deed of trust, security agreement,
 535 or other similar security document against such a beneficial
 536 interest that is real property in the public records specified
 537 in paragraph (8)(c) continues the effectiveness and priority of
 538 a financing statement filed against such a beneficial interest
 539 before July 1, 2014, if:

540 (a) The recording of the security document in that county
 541 is effective to perfect a lien on such beneficial interest under
 542 paragraph (8)(c);

543 (b) The recorded security document identifies a financing
 544 statement filed before July 1, 2014, by indicating the office in
 545 which the financing statement was filed and providing the dates
 546 of filing and the file numbers, if any, of the financing
 547 statement and of the most recent continuation statement filed
 548 with respect to the financing statement; and

549 (c) The recorded security document indicates that such
 550 financing statement filed before July 1, 2014, remains
 551 effective.

Page 19 of 21

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

590-02267-13

20131172c1

552
 553 If no original security document bearing the debtor's signature
 554 is readily available for recording in the public records, a
 555 secured party may proceed under this subsection with such
 556 financing statement filed before July 1, 2014, by recording a
 557 copy of a security document verified by the secured party as
 558 being a true and correct copy of an original authenticated by
 559 the debtor. This subsection does not apply to the perfection of
 560 a security interest in any beneficial interest in a land trust
 561 that is determined to be personal property under subsection (6).

562 (14)(11) REMEDIAL ACT.—This act is remedial in nature and
 563 shall be given a liberal interpretation to effectuate the intent
 564 and purposes hereinabove expressed.

565 (15)(12) EXCLUSION.—This act does not apply to any deed,
 566 mortgage, or other instrument to which s. 689.07 applies.

567 Section 3. Section 736.0102, Florida Statutes, is amended
 568 to read:

569 736.0102 Scope.—

570 (1) Except as otherwise provided in this section, this code
 571 applies to express trusts, charitable or noncharitable, and
 572 trusts created pursuant to a law, judgment, or decree that
 573 requires the trust to be administered in the manner of an
 574 express trust.

575 (2) This code does not apply to constructive or resulting
 576 trusts; conservatorships; custodial arrangements pursuant to the
 577 Florida Uniform Transfers to Minors Act; business trusts
 578 providing for certificates to be issued to beneficiaries; common
 579 trust funds; ~~land trusts under s. 689.071, except to the extent~~
 580 ~~provided in s. 689.071(7);~~ trusts created by the form of the

Page 20 of 21

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

590-02267-13

20131172c1

581 account or by the deposit agreement at a financial institution;
582 voting trusts; security arrangements; liquidation trusts; trusts
583 for the primary purpose of paying debts, dividends, interest,
584 salaries, wages, profits, pensions, or employee benefits of any
585 kind; and any arrangement under which a person is nominee or
586 escrowee for another.

587 (3) This code does not apply to any land trust under s.
588 689.071, except to the extent provided in s. 689.071(7), s.
589 721.08(2)(c)4. or s. 721.53(1)(e). A trust governed at its
590 creation by chapter 736, former chapter 737, or any prior trust
591 statute superseded or replaced by any provision of former
592 chapter 737, is not a land trust regardless of any amendment or
593 modification of the trust, any change in the assets held in the
594 trust, or any continuing trust resulting from the distribution
595 or retention in further trust of assets from the trust.

596 Section 4. The Division of Law Revision and Information is
597 directed to replace the phrase "the effective date of this act"
598 wherever it occurs in this act with such date.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Land Trust Bill Number 1172
(if applicable)
Name Martha Edentfield Amendment Barcode _____
(if applicable)
Job Title Attorney
Address PO Box 10095 Phone 850-222-3533
Street
Tallahassee FL 32302 E-mail _____
City State Zip

Speaking: For Against Information

Representing The Real Property Probate Trust Law Section of the FL Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



The Florida Senate

Committee Agenda Request

To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 2, 2013

RECEIVED

APR 08 2013

SENATE
RULES COMMITTEE

I respectfully request that **Senate Bill 1172**, relating to Land Trusts, be placed on the:

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

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

Senator David Simmons
Florida Senate, District 10

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1090

INTRODUCER: Senator Altman

SUBJECT: Motor Vehicles

DATE: April 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	Favorable
2.	Everette	Phelps	RC	Favorable
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 1090 authorizes the Department of Highway Safety and Motor Vehicles (DHSMV or department) to collect a voluntary contribution of \$1 through motor vehicle registration and driver license fees; initial, renewal, or identification card fees for the Auto Club Group Traffic Safety Foundation, Inc.

This bill substantially amends ss. 320.02 and 322.081 of the Florida Statutes.

II. Present Situation:

Auto Club Group Traffic Safety Foundation, Inc.

The Tampa-based AAA Auto Club South and Dearborn, Michigan-based, The Auto Club Group have combined operations to become “The Auto Club South Traffic Safety Foundation,”¹ a 501(c)(3) non-profit organization created to produce a significant and continuous reduction in traffic crashes, injuries and deaths in the communities. For more than a century, AAA has developed and provided traffic safety programs that play an important role in communities by protecting and saving lives of drivers, passengers, bicyclists and pedestrians of all ages. AAA Auto Club Group Traffic Safety Foundation will advance these efforts by:

- Enabling additional funding from non-AAA sources;
- Increasing public awareness of the importance of travel safety;
- Developing and coordinating programs to improve driving skills;

¹ <http://autoclubsouth.aaa.com/newsandsafety/media.aspx>- related links (AAA Foundation for Traffic Safety) - last visited 3/11/2-13

- Designing and implementing safety programs and campaigns;
- Conducting and participating in exhibitions, contests, programs and safety activities with schools, police departments and other groups; and
- Serving as a resource to the media and communities for the dissemination of safety information.

Voluntary Contributions

The voluntary contributions process provides the opportunity for citizens to make a donation by checking a box on a form when registering a vehicle or renewing a registration, as well as applying for a new replacement or driver license.²

Contributions are distributed to check-off organizations as requested by motor vehicle and driver license applicants.

An organization that desires to receive a voluntary contribution must be specifically authorized by Florida Statutes. Section 320.023, F.S., establishes requirements for organizations seeking to establish a voluntary contribution on motor vehicle registration application forms, and s. 322.081, F.S., establishes similar requirements for driver license applications. Both sections require the following:

- A request for the voluntary contribution being sought, describing the voluntary contribution in general terms;
- An application fee, not to exceed \$10,000 to defray the department's cost for reviewing the application and developing the voluntary contribution check off, if authorized. State funds may not be used to pay the application fee; and
- A marketing strategy outlining short-term and long-term marketing plans for the contribution and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues to be derived from the contributions.

This information must be submitted to DHSMV at least 90 days before the convening of the next regular session of the Legislature.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 320.02(15), F.S., authorizing the department to include the Auto Club Group Traffic Safety Foundation, Inc., on the motor vehicle registration and renewal form, allowing collection of a \$1 voluntary contribution to the registration fee to be used to improve traffic safety culture in communities through effective outreach, education, and activities in the state.

Section 2 of the bill amends s. 322.08(7), F.S., authorizing the department to collect a \$1 voluntary contribution through driver license fees; initial, renewal, or identification card fees to

² Currently, Section 320.02(8)(14) and (15), F.S.; Section 320.08047, F.S., and Section 328.72(11) and (16), F.S., provide motor vehicle registration applicants with 24 options for voluntary contributions. Section 322.08(7), F.S., provides driver license applicants with 17 options for voluntary contributions.

the Auto Club Group Safety Foundation, Inc, to improve traffic safety culture in communities through effective outreach, education, and activities in the state.

Under ss. 320.023 and 322.081, F.S., there is currently a moratorium on the establishment of any new voluntary contributions on motor vehicle registration application and driver license application forms until July 1, 2013.

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

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:

C. Government Sector Impact:

	Amount Year 1 <u>FY 2013-2014</u>	Amount Year 2 <u>FY 2014-2015</u>	Amount Year 3 <u>FY 2015-2016</u>
1. Non-Recurring or First Year Start Up Effects:			
<u>REVENUES:</u>			
Highway Safety Operating Trust Fund:			
Application Fee	<u>\$ 20,000</u>	<u>\$ 0</u>	<u>\$ 0</u>

The above amount reflects the \$20,000 application fee required to be paid by the Auto Club Group Traffic Safety Foundation, Inc, a nonprofit organization, for the motor vehicle and driver’s license application.

EXPENDITURES:

Highway Safety Operating Trust Fund:

Contracted Services	<u>\$65,600</u>	<u>\$ 0</u>	<u>\$ 0</u>
---------------------	-----------------	-------------	-------------

Total Expenditures:	<u>\$65,600</u>	<u>\$ 0</u>	<u>\$ 0</u>
---------------------	-----------------	-------------	-------------

The amount above reflects the programming cost to develop the new application forms.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

By Senator Altman

16-00682-13

20131090__

A bill to be entitled

An act relating to motor vehicles; amending ss. 320.02 and 322.08, F.S.; requiring the application forms for motor vehicle registration and renewal of registration and for an original, renewal, or replacement driver license or identification card to include language permitting the applicant to make a voluntary contribution to Auto Club Group Traffic Safety Foundation, Inc.; providing that such contributions are not income for specified purposes; providing for use of funds; providing that the foundation must comply with specified provisions; providing an effective date.

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

Section 1. Paragraph (s) is added to subsection (15) of section 320.02, Florida Statutes, to read:

320.02 Registration required; application for registration; forms.-

(15)

(s) The application form for motor vehicle registration and renewal registration must include language permitting a voluntary contribution of \$1 or more per applicant, which contribution must be distributed to Auto Club Group Traffic Safety Foundation, Inc., a nonprofit organization. Funds received by the foundation must be used to improve traffic safety culture in communities through effective outreach, education, and activities in the state that will save lives,

Page 1 of 4

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

16-00682-13

20131090__

reduce injuries, and prevent crashes. The foundation must comply with s. 320.023.

For the purpose of applying the service charge provided in s. 215.20, contributions received under this subsection are not income of a revenue nature.

Section 2. Subsection (7) of section 322.08, Florida Statutes, is amended to read:

322.08 Application for license; requirements for license and identification card forms.-

(7) The application form for an original, renewal, or replacement driver license or identification card shall include language permitting the following:

(a) A voluntary contribution of \$1 per applicant, which contribution shall be deposited into the Health Care Trust Fund for organ and tissue donor education and for maintaining the organ and tissue donor registry.

(b) A voluntary contribution of \$1 per applicant, which contribution shall be distributed to the Florida Council of the Blind.

(c) A voluntary contribution of \$2 per applicant, which shall be distributed to the Hearing Research Institute, Incorporated.

(d) A voluntary contribution of \$1 per applicant, which shall be distributed to the Juvenile Diabetes Foundation International.

(e) A voluntary contribution of \$1 per applicant, which shall be distributed to the Children's Hearing Help Fund.

(f) A voluntary contribution of \$1 per applicant, which

Page 2 of 4

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

16-00682-13 20131090__

59 shall be distributed to Family First, a nonprofit organization.

60 (g) A voluntary contribution of \$1 per applicant to Stop
61 Heart Disease, which shall be distributed to the Florida Heart
62 Research Institute, a nonprofit organization.

63 (h) A voluntary contribution of \$1 per applicant to Senior
64 Vision Services, which shall be distributed to the Florida
65 Association of Agencies Serving the Blind, Inc., a not-for-
66 profit organization.

67 (i) A voluntary contribution of \$1 per applicant for
68 services for persons with developmental disabilities, which
69 shall be distributed to The Arc of Florida.

70 (j) A voluntary contribution of \$1 to the Ronald McDonald
71 House, which shall be distributed each month to Ronald McDonald
72 House Charities of Tampa Bay, Inc.

73 (k) Notwithstanding s. 322.081, a voluntary contribution of
74 \$1 per applicant, which shall be distributed to the League
75 Against Cancer/La Liga Contra el Cancer, a not-for-profit
76 organization.

77 (l) A voluntary contribution of \$1 per applicant to Prevent
78 Child Sexual Abuse, which shall be distributed to Lauren's Kids,
79 Inc., a nonprofit organization.

80 (m) A voluntary contribution of \$1 per applicant, which
81 shall be distributed to Prevent Blindness Florida, a not-for-
82 profit organization, to prevent blindness and preserve the sight
83 of the residents of this state.

84 (n) Notwithstanding s. 322.081, a voluntary contribution of
85 \$1 per applicant to the state homes for veterans, to be
86 distributed on a quarterly basis by the department to the State
87 Homes for Veterans Trust Fund, which is administered by the

16-00682-13 20131090__

88 Department of Veterans' Affairs.

89 (o) A voluntary contribution of \$1 per applicant to the
90 Disabled American Veterans, Department of Florida, which shall
91 be distributed quarterly to Disabled American Veterans,
92 Department of Florida, a nonprofit organization.

93 (p) A voluntary contribution of \$1 per applicant for Autism
94 Services and Supports, which shall be distributed to Achievement
95 and Rehabilitation Centers, Inc., Autism Services Fund.

96 (q) A voluntary contribution of \$1 per applicant to Support
97 Our Troops, which shall be distributed to Support Our Troops,
98 Inc., a Florida not-for-profit organization.

99 (r) A voluntary contribution of \$1 or more per applicant to
100 the Auto Club Group Traffic Safety Foundation, Inc., a nonprofit
101 organization. Funds received by the foundation must be used to
102 improve traffic safety culture in communities through effective
103 outreach, education, and activities in the state that will save
104 lives, reduce injuries, and prevent crashes. The foundation must
105 comply with s. 322.081.

106
107 A statement providing an explanation of the purpose of the trust
108 funds shall also be included. For the purpose of applying the
109 service charge provided in s. 215.20, contributions received
110 under paragraphs (b)-(r) ~~(b)-(q)~~ are not income of a revenue
111 nature.

112 Section 3. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

04-09-13

Meeting Date

Topic AAA Auto Group Foundation - Voluntary Contributions

Bill Number SB 1090
(if applicable)

Name H. Lee Moffitt

Amendment Barcode _____
(if applicable)

Job Title Special Counsel

Address 2457 Care Drive
Street

Phone 850-878-2411

Tallahassee FL 32312
City State Zip

E-mail _____

Speaking: For Against Information

Representing AAA The Auto Club Group

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

This bill amends the following sections of the Florida Statutes: 163.3180, 163.3182, and 190.006.

II. Present Situation:

Transportation Concurrency

Transportation concurrency is a growth management strategy aimed at ensuring that transportation facilities and services are available concurrent with the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate Level of Service (LOS) for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. If adequate capacity is not available, then the developer must provide the necessary improvements, provide monetary contribution toward the improvements, or wait until government provides the necessary improvements.¹

Level of Service

Level of service is a technical measure of the quality of service provided by a roadway. LOS is graded on an A through F scale based on the average arterial speed of a roadway. An uncongested roadway with a high average arterial speed will receive an A, while a congested roadway with a low average arterial speed will receive an F.² Local governments, in conjunction with the Florida Department of Transportation (FDOT), are responsible for setting LOS standards for roadways.³

Proportionate Share

Proportionate share is the amount of money a developer must contribute to mitigate the transportation impacts of a new development. Proportionate share contributions are triggered when a new development will cause a decrease in the LOS grade below a set standard. When a proportionate share contribution is triggered, a developer must, at minimum, contribute money toward one or several mobility improvements. However, developers are only required to contribute toward deficiencies they create, and are not required to correct existing deficiencies.⁴

Transportation Concurrency in Florida

Florida adopted the concept of transportation concurrency with the passage of the 1985 Growth Management Act. Since adoption, the legislature has frequently revisited the concept of transportation concurrency, most recently making substantial changes to s. 163.3180, F.S., in 2005, 2007, 2009 and 2011.⁵

¹ Fla. Dep't of Comty. Affairs, *Transportation Concurrency: Best Practices Guide*, pg. 5 (2007), retrieved from www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf (last visited March 18, 2013).

² *Id.* at 53.

³ Section 163.3180(5)(b), F.S.

⁴ Section 163.3180(5)(h), F.S.

⁵ See L.O.F. s. 5, ch. 2005-290 (Providing requirements for proportionate share mitigation), s. 11, ch. 2007-196 (Authorizing study on multimodal districts, providing for concurrency backlog and satisfaction of concurrency requirements), s. 3, ch. 2007-204 (provides exception from concurrency for airports and urban service area, revises transportation concurrency

Transportation concurrency in urban areas is often more costly and functionally difficult than in non-urban areas.⁶ As a result, transportation concurrency can result in urban sprawl and the discouragement of development in urban areas, in direct conflict with the general goals and policies of part II, ch. 163, F.S. Also, transportation concurrency can prevent the implementation of viable forms of alternative transit.⁷

Additionally, the frequent changes to transportation concurrency requirements have affected local governments in different ways. In some cases, the changes have provided more flexibility, less state oversight and created more planning tools for local governments, but in other cases, the changes created solutions that were inflexible and unworkable for all but a few local governments, with many local governments having difficulty implementing a transportation concurrency system or local governments implementing highly inconsistent policies.⁸ Recent legislative changes to transportation concurrency have sought to address these problems. In 2011, the Legislature passed the Community Planning Act, which made comprehensive changes to growth management regulation in Florida. As part of the act, the Legislature overhauled transportation concurrency and made it optional for local governments.⁹ The act also gave local governments the option of adopting alternative mobility funding systems.¹⁰

Local governments choosing to implement transportation concurrency must still follow established guidelines related to LOS standards and proportionate share contributions.¹¹ Specifically, local governments that implement transportation concurrency must:

- consult with FDOT when proposed plan amendments affect facilities on the strategic intermodal system;
- exempt certain public transit facilities from concurrency;
- allow an applicant for a development-of-regional-impact development order, a rezoning, or other land use development permit to satisfy the transportation concurrency requirements of the local comprehensive plan, the local government’s concurrency management system, and s. 380.06, when applicable, if:
 - the applicant enters into a binding agreement to pay for or construct its proportionate share of required improvements;

exceptions for multiuse DRIs, revises proportionate share, provides requirements for proportionate share mitigation and fair-share), s. 5, ch. 2009-85 (provides definition for backlog, provides legislative findings and declarations on backlog, adds provisions on debt incurred from transportation concurrency backlog projects, requires funding of backlog trust funds), s. 4, ch. 2009-96 (revises concurrency requirements, deletes requirements for concurrency exception areas, requires OPPAGA to submit report to legislature concerning the effects of transportation exception areas, revises requirements for impact fees), s. 4, ch. 2011-14 (reenacts s. 163.3180(5), (10), (13)(b) and (e), relating to concurrency requirements for transportation facilities), s. 15, ch. 2011-139 (revises and provides provisions related to concurrency, revises application and findings, revises local government requirements, provides for urban infill, redevelopment, downtown revitalization, provides for DRIs, revises provisions relating to transportation deficiency plans).

⁶*Transportation Concurrency: Best Practices Guide* at 11.

⁷*Id.* at 10.

⁸*Id.* at 10-12.

⁹L.O.F. s. 15, ch. 2011-139, “The 2011 Community Planning Act.”

¹⁰*Id.*

¹¹ Section 163.3180(5)(h), F.S.

- the proportionate-share contribution or construction is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility;
- the local government has provided a means by which the landowner will be assessed a proportionate share of the cost of providing the transportation facilities necessary to serve the proposed development.

However, local governments that implement alternative mobility funding systems similar to concurrency, but not under the auspices of s. 163.3180, F.S., are not required to follow the LOS and proportionate share guidelines established by s. 163.3180, F.S.

Dual Rational Nexus Test

The Florida Supreme Court recognized in 1976 that new development may be required to pay its “fair share” of additional regulatory costs created by the new development, but that new development charges could constitute illegal taxes if the charges “. . . bore no relationship to (and were greatly in excess of) the costs of the regulation which was supposed to justify their collection.”¹² Subsequent to the court’s opinion, a two-pronged test has emerged that all local governments in Florida must satisfy to lawfully impose an impact fee or new development fee.

Known as the dual rational nexus test, a local government must show a rational nexus between proposed development and the need for additional capital facilities for which the fee is imposed, and a rational nexus between the improvement or expenditure of funds collected and the benefits accruing to the subject property.¹³ Florida case law, taken together, provides the following with respect to meeting the dual rational nexus text:

- “The local government must be able to justify the fees or exactions by showing that the new development will create more than a possible or incidental need for increased capacity of any public facilities that serve the new development.
- The local government must demonstrate that the new development will actually receive more than an incidental benefit from the expenditure of the impact fees or dedication of property.
- The developer cannot be required to pay impact fees or dedicate property that exceed a pro rata share of the burden imposed on those public facilities.
- In the case of impact fees, the fees must be earmarked to fund expansion of capital facilities that serve the area in which the new development is located.
- The impact fees must be used to provide only the additional capacity required by the new development and not any existing deficiencies.
- The impact fees must not be used to benefit other residents by financing capital growth that is bound to occur with or without the proposed development.
- The impact fees must be spent within a defined, reasonably short amount of time or returned to the payer of the fee.
- The local government’s showing of a rational nexus between the proposed development and the community’s need for increased capacity of public services, or between the expenditure

¹² *Contractors and Builders Association of Pinellas County, et al. v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976).

¹³ The Florida Bar Journal, *An Analysis of Affordable/Work-force Housing Initiatives and Their Legality in the State of Florida, Part II*, Marshall, Michael J. and Rothenberg, Mark A, Volume 82, No. 7, July/August (citations omitted).

of the impact fees and the benefit accrued to the new development, may be refuted by the developer with additional evidence or an alternate study.”¹⁴

Transportation Development Authorities

A county or municipality may create a transportation development authority (TDA)¹⁵ if it has an identified transportation deficiency; *i.e.*, an identified need where the existing and projected extent of traffic volume exceeds the level of service standards adopted in a local government comprehensive plan for a transportation facility.¹⁶ Each (TDA) shall adopt a transportation sufficiency plan as a part of the local government comprehensive plan within 6 months after the creation of the authority. The plan must identify all transportation facilities that have been designated as deficient and establish a schedule for financing and construction of transportation projects that will eliminate transportation deficiencies within the jurisdiction of the TDA within 10 years after the transportation sufficiency plan adoption. The plan must include a priority listing of all transportation facilities that have been designated as deficient and do not satisfy requirements pursuant to s. 163.3180, F.S., and the applicable local government comprehensive plan. Currently authorized TDA transportation projects, designed to relieve transportation deficiencies within a TDA’s jurisdiction, may include transportation facilities that provide for alternative modes of travel including sidewalks, bikeways, and mass transit which are related to a deficient transportation facility.

Transit Oriented Development (TOD)

Transit-Oriented Developments are compact, moderate to high intensity and density, mixed use areas within one half mile of a transit stop or station that is designed to maximize bicycle and walking trips and access to transit.¹⁷ They also are characterized by streetscapes and an urban form oriented to bicyclists and pedestrians to promote bicycling and walking trips to transit stations and varied other uses within station areas. One quarter-mile and one-half mile distances represent a 5 to 10 minute walk time, which is the amount of time most people are willing to walk to a destination. The most intense and dense development is typically located within the one quarter mile radius (transit core). Developments’ intensities and densities gradually decrease out to the one-half mile radius (transit neighborhood) and the one mile radius (transit supportive area). FDOT has been developing transit oriented development design guidelines to provide general parameters and strategies to local governments and agencies to promote and implement transitready development patterns.¹⁸

¹⁴ *Id.* (citations omitted).

¹⁵ Creation of TDAs is authorized to address a “transportation deficiency area,” the geographic area within the unincorporated portion of a county or within the municipal boundary of a municipality designated in a local government comprehensive plan.

¹⁶ Section 163.3182(1)(d), F.S.

¹⁷ Section 163.3164(46), F.S.

¹⁸ Florida Dept of Transportation, *A Framework for Transit Oriented Development in Florida*, available at http://www.fltod.com/renaissance/docs/Products/FrameworkTOD_0715.pdf (March 2011).

Community Development Districts (CDDs)

Community Development Districts are independent, special-purpose units of government established to finance basic services within a development, including infrastructure construction, services, and maintenance. Common infrastructure improvements provided by CDDs include drainage, potable water, sewerage, roads, and parks.¹⁹ Developers seek CDD approval to obtain low-cost financing by issuing tax-exempt bonds, with lower interest rates. CDDs also have the power to collect fees, levy lienable assessments, or ad valorem taxes against properties within the project for repayment. CDDs are required to have a five-member board of supervisors, elected by the landowners.²⁰

If the board of supervisors proposes to exercise the ad valorem taxing power authorized by s. 190.021, F.S., the district board shall call an election at which the members of the board of supervisors will be elected by the qualified electors of the district.²¹ Regardless of whether a district has proposed to levy ad valorem taxes, commencing 6 years after the initial appointment of members or, for a district exceeding 5,000 acres in area or for a compact, urban, mixed-use district, 10 years after the initial appointment of members, the position of each member whose term has expired shall be filled by a qualified elector of the district, elected by the qualified electors of the district.²²

If, in the 6th year after the initial appointment of members, or 10 years after such initial appointment for districts exceeding 5,000 acres in area or for a compact, urban, mixed-use district, there are not at least 250 qualified electors in the district, or for a district exceeding 5,000 acres or for a compact, urban, mixed-use district, there are not at least 500 qualified electors, members of the board of supervisors shall continue to be elected by landowners.²³

III. Effect of Proposed Changes:

Section 1 amends s. 163.3180, F.S., to revise the established guidelines related to LOS standards and proportionate share contributions that local governments choosing to implement transportation concurrency must follow. The bill provides that local governments continuing to implement a transportation concurrency system, *whether in the form adopted into the comprehensive plan before July 1, 2011, or as subsequently modified*, must allow an applicant for a development agreement (in addition to a DRI impact development order, a rezoning, or other land use development permit) to satisfy transportation concurrency requirements if the applicant *in good faith offers to enter*, rather than *enters*, into a binding agreement to pay for or construct its proportionate share of required improvements *in a manner consistent with subsection (5)*.

Additionally, with respect to the requirement that the proportionate-share contribution or construction must be sufficient to accomplish one or more mobility improvements, the bill

¹⁹ Sections 190.002 and 190.012, F.S.

²⁰ Section 190.006(1) and (2), F.S.

²¹ Section 190.006(3)(a)1, F.S.

²² Section 190.006(3)(a)2a, F.S.

²³ *Id.*

allows a local government to accept contributions from multiple applicants for a planned improvement if it maintains such contributions in a separate account designated for that purpose. Also, the local government must provide the basis upon which landowners will be assessed a proportionate share of the cost of addressing the transportation impacts resulting from a proposed development, rather than the means by which a landowner will be assessed a proportionate share of the cost of providing the transportation facilities necessary to serve the proposed development. The bill makes a technical change to current law to clarify that a local government is not required to approve a development that, for reasons other than transportation impacts, is not qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.

If a local government elects to repeal transportation concurrency, the bill encourages it to adopt an alternative mobility funding system that uses one or more of the tools and techniques identified in s. 163.3180(5)(f), F.S. An alternative mobility funding system may not be used to deny, time, or phase an application for site plan, plat approval, final subdivision approval, building permit, or the functional equivalent of such approvals if the developer agrees to pay for the development's identified transportation impacts using the funding mechanism implemented by the local government. The bill states that the revenue from the funding mechanism adopted in the alternative system must be used to implement the needs of the local government's plan which serve as the basis for the fee imposed. A mobility-fee-based funding system must comply with the dual rational nexus test applicable to impact fees. An alternative system that is not mobility-fee-based may not be applied in a manner that imposes upon new development any responsibility for funding existing transportation deficiencies as that term is defined in s. 163.3180(5)(h), F.S.

Section 2 amends s. 163.3182, F.S., relating to transportation deficiencies and the powers granted to transportation development authorities to address deficiencies within the authority's jurisdiction. Specifically, the bill allows a transportation development authority to undertake transportation projects within and outside of the designated deficiency area to relieve deficiencies identified by the transportation deficiency plan. The bill also stipulates that mass transit improvements and services may extend outside a deficiency area to an existing or planned logical terminus of a selected improvement.

Section 3 amends s. 190.006, F.S., relating to the board of supervisors for community development districts. The bill amends this section to provide that transit-oriented developments (as defined in s. 163.3164, F.S.) exceeding 25 acres in area are subject to the specified election requirements.

Section 4 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may reduce required contributions from developers for new developments in certain local government jurisdictions and could reduce delays for developer projects. Pooling contributions from multiple developments by a local government may result in needed transportation improvements.

C. Government Sector Impact:

This bill may limit the flexibility of local governments to develop alternative means to transportation concurrency.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Transportation on April 2, 2013:

The CS makes a technical change to current law to clarify that a local government is not required to approve a development that, for reasons other than transportation impacts, is not qualified for approval.

CS by Community Affairs on March 20, 2013:

The CS makes technical and clarifying changes to the language of the bill regarding alternative mobility funding systems. The CS provides requirements and limitations for a mobility-fee-based funding system.

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 the Committees on Transportation; and Community Affairs; and
Senator Hukill

596-03449A-13

2013972c2

A bill to be entitled

An act relating to transportation development;
amending s. 163.3180, F.S.; providing that local
governments that implement transportation concurrency
must allow an applicant for a development agreement to
satisfy transportation concurrency requirements if
certain criteria are met, and must provide the basis
upon which landowners will be assessed a proportionate
share of the cost of addressing certain transportation
impacts; encouraging a local government that repeals
transportation concurrency to adopt an alternative
mobility funding system that is subject to certain
requirements; amending s. 163.3182, F.S.; expanding
the types of transportation projects that a
transportation development authority may undertake or
carry out; amending s. 190.006, F.S.; modifying the
method for filling positions within the board of
supervisors; providing an effective date.

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

Section 1. Paragraph (h) of subsection (5) of section
163.3180, Florida Statutes, is amended, and paragraph (i) is
added to that subsection, to read:

163.3180 Concurrency.—

(5)

(h) 1. Local governments that continue to implement a
transportation concurrency system, whether in the form adopted
into the comprehensive plan before July 1, 2011, or as

Page 1 of 9

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

596-03449A-13

2013972c2

subsequently modified, must:

a.1- Consult with the Department of Transportation when
proposed plan amendments affect facilities on the strategic
intermodal system.

b.2- Exempt public transit facilities from concurrency. For
the purposes of this sub-subparagraph ~~subparagraph~~, public
transit facilities include transit stations and terminals;
transit station parking; park-and-ride lots; intermodal public
transit connection or transfer facilities; fixed bus, guideway,
and rail stations; and airport passenger terminals and
concourses, air cargo facilities, and hangars for the assembly,
manufacture, maintenance, or storage of aircraft. As used in
this sub-subparagraph ~~subparagraph~~, the terms "terminals" and
"transit facilities" do not include seaports or commercial or
residential development constructed in conjunction with a public
transit facility.

c.3- Allow an applicant for a development-of-regional-
impact development order, development agreement, a rezoning, or
other land use development permit to satisfy the transportation
concurrency requirements of the local comprehensive plan, the
local government's concurrency management system, and s. 380.06,
when applicable, if:

(I)a- The applicant in good faith offers to enter ~~enters~~
into a binding agreement to pay for or construct its
proportionate share of required improvements in a manner
consistent with this subsection.

(II)b- The proportionate-share contribution or construction
is sufficient to accomplish one or more mobility improvements
that will benefit a regionally significant transportation

Page 2 of 9

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

596-03449A-13

2013972c2

59 facility. A local government may accept contributions from
 60 multiple applicants for a planned improvement if it maintains
 61 contributions in a separate account designated for that purpose.

62 ~~d. e. (I) Provide the basis upon which The local government~~
 63 ~~has provided a means by which the landowners landowner~~ will be
 64 assessed a proportionate share of the cost of addressing the
 65 transportation impacts resulting from a providing the
 66 ~~transportation facilities necessary to serve the proposed~~
 67 development.

68 2. An applicant ~~may shall~~ not be held responsible for the
 69 additional cost of reducing or eliminating deficiencies.

70 ~~(f)~~ When an applicant contributes or constructs its
 71 proportionate share pursuant to this paragraph ~~subparagraph~~, a
 72 local government may not require payment or construction of
 73 transportation facilities whose costs would be greater than a
 74 development's proportionate share of the improvements necessary
 75 to mitigate the development's impacts.

76 ~~a. (A)~~ The proportionate-share contribution shall be
 77 calculated based upon the number of trips from the proposed
 78 development expected to reach roadways during the peak hour from
 79 the stage or phase being approved, divided by the change in the
 80 peak hour maximum service volume of roadways resulting from
 81 construction of an improvement necessary to maintain or achieve
 82 the adopted level of service, multiplied by the construction
 83 cost, at the time of development payment, of the improvement
 84 necessary to maintain or achieve the adopted level of service.

85 ~~b. (B)~~ In using the proportionate-share formula provided in
 86 this subparagraph, the applicant, in its traffic analysis, shall
 87 identify those roads or facilities that have a transportation

596-03449A-13

2013972c2

88 deficiency in accordance with the transportation deficiency as
 89 defined in subparagraph 4 ~~sub-subparagraph e~~. The proportionate-
 90 share formula provided in this subparagraph shall be applied
 91 only to those facilities that are determined to be significantly
 92 impacted by the project traffic under review. If any road is
 93 determined to be transportation deficient without the project
 94 traffic under review, the costs of correcting that deficiency
 95 shall be removed from the project's proportionate-share
 96 calculation and the necessary transportation improvements to
 97 correct that deficiency shall be considered to be in place for
 98 purposes of the proportionate-share calculation. The improvement
 99 necessary to correct the transportation deficiency is the
 100 funding responsibility of the entity that has maintenance
 101 responsibility for the facility. The development's proportionate
 102 share shall be calculated only for the needed transportation
 103 improvements that are greater than the identified deficiency.

104 ~~c. (C)~~ When the provisions of subparagraph 1. and this
 105 subparagraph have been satisfied for a particular stage or phase
 106 of development, all transportation impacts from that stage or
 107 phase for which mitigation was required and provided shall be
 108 deemed fully mitigated in any transportation analysis for a
 109 subsequent stage or phase of development. Trips from a previous
 110 stage or phase that did not result in impacts for which
 111 mitigation was required or provided may be cumulatively analyzed
 112 with trips from a subsequent stage or phase to determine whether
 113 an impact requires mitigation for the subsequent stage or phase.

114 ~~d. (D)~~ In projecting the number of trips to be generated by
 115 the development under review, any trips assigned to a toll-
 116 financed facility shall be eliminated from the analysis.

596-03449A-13

2013972c2

117 ~~e. (E)~~ The applicant shall receive a credit on a dollar-for-
 118 dollar basis for impact fees, mobility fees, and other
 119 transportation concurrency mitigation requirements paid or
 120 payable in the future for the project. The credit shall be
 121 reduced up to 20 percent by the percentage share that the
 122 project's traffic represents of the added capacity of the
 123 selected improvement, or by the amount specified by local
 124 ordinance, whichever yields the greater credit.

125 ~~3. d.~~ This subsection does not require a local government to
 126 approve a development that, for reasons other than
 127 transportation impacts, is not ~~otherwise~~ qualified for approval
 128 pursuant to the applicable local comprehensive plan and land
 129 development regulations.

130 ~~4. e.~~ As used in this subsection, the term "transportation
 131 deficiency" means a facility or facilities on which the adopted
 132 level-of-service standard is exceeded by the existing,
 133 committed, and vested trips, plus additional projected
 134 background trips from any source other than the development
 135 project under review, and trips that are forecast by established
 136 traffic standards, including traffic modeling, consistent with
 137 the University of Florida's Bureau of Economic and Business
 138 Research medium population projections. Additional projected
 139 background trips are to be coincident with the particular stage
 140 or phase of development under review.

141 (i) If a local government elects to repeal transportation
 142 concurrency, it is encouraged to adopt an alternative mobility
 143 funding system that uses one or more of the tools and techniques
 144 identified in paragraph (f). An alternative mobility funding
 145 system may not be used to deny, time, or phase an application

596-03449A-13

2013972c2

146 for site plan, plat approval, final subdivision approval,
 147 building permit, or the functional equivalent of such approvals
 148 if the developer agrees to pay for the development's identified
 149 transportation impacts using the funding mechanism implemented
 150 by the local government. The revenue from the funding mechanism
 151 adopted in the alternative system must be used to implement the
 152 needs of the local government's plan which serve as the basis
 153 for the fee imposed. A mobility-fee-based funding system must
 154 comply with the dual rational nexus test applicable to impact
 155 fees. An alternative system that is not mobility-fee-based may
 156 not be applied in a manner that imposes upon new development any
 157 responsibility for funding existing transportation deficiencies
 158 as that term is defined in paragraph (h).

159 Section 2. Paragraph (b) of subsection (3) of section
 160 163.3182, Florida Statutes, is amended to read:

161 163.3182 Transportation deficiencies.—

162 (3) POWERS OF A TRANSPORTATION DEVELOPMENT AUTHORITY.—Each
 163 transportation development authority created pursuant to this
 164 section has the powers necessary or convenient to carry out the
 165 purposes of this section, including the following powers in
 166 addition to others granted in this section:

167 (b) To undertake and carry out transportation projects for
 168 transportation facilities designed to relieve transportation
 169 deficiencies within the authority's jurisdiction. Transportation
 170 projects may include transportation facilities that provide for
 171 alternative modes of travel including sidewalks, bikeways, and
 172 mass transit which are related to a deficient transportation
 173 facility. Transportation projects may also include projects
 174 within and outside the designated deficiency area to relieve

596-03449A-13

2013972c2

175 deficiencies identified by the transportation sufficiency plan.
 176 Mass transit improvements and service may extend outside a
 177 deficiency area to an existing or planned logical terminus of a
 178 selected improvement.

179 Section 3. Paragraph (a) of subsection (3) of section
 180 190.006, Florida Statutes, is amended to read:

181 190.006 Board of supervisors; members and meetings.-

182 (3) (a) 1. If the board proposes to exercise the ad valorem
 183 taxing power authorized by s. 190.021, the district board shall
 184 call an election at which the members of the board of
 185 supervisors will be elected. Such election shall be held in
 186 conjunction with a primary or general election unless the
 187 district bears the cost of a special election. Each member shall
 188 be elected by the qualified electors of the district for a term
 189 of 4 years, except that, at the first such election, three
 190 members shall be elected for a period of 4 years and two members
 191 shall be elected for a period of 2 years. All elected board
 192 members must be qualified electors of the district.

193 2.a. Regardless of whether a district has proposed to levy
 194 ad valorem taxes, commencing 6 years after the initial
 195 appointment of members or, for a district exceeding 5,000 acres
 196 in area, ~~or~~ for a compact, urban, mixed-use district, or for a
 197 transit-oriented development, as defined in s. 163.3164,
 198 exceeding 25 acres in area, 10 years after the initial
 199 appointment of members, the position of each member whose term
 200 has expired shall be filled by a qualified elector of the
 201 district, elected by the qualified electors of the district.
 202 However, for those districts established after June 21, 1991,
 203 and for those existing districts established after December 31,

Page 7 of 9

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

596-03449A-13

2013972c2

204 1983, which have less than 50 qualified electors on June 21,
 205 1991, sub-subparagraphs b. and d. ~~shall~~ apply. If, in the 6th
 206 year after the initial appointment of members, or 10 years after
 207 such initial appointment for a district ~~districts~~ exceeding
 208 5,000 acres in area, ~~or~~ for a compact, urban, mixed-use
 209 district, or for a transit-oriented development, as defined in
 210 s. 163.3164, exceeding 25 acres in area, there are not at least
 211 250 qualified electors in the district, or for a district
 212 exceeding 5,000 acres, ~~or~~ for a compact, urban, mixed-use
 213 district, or for a transit-oriented development, as defined in
 214 s. 163.3164, exceeding 25 acres in area, there are not at least
 215 500 qualified electors, members of the board shall continue to
 216 be elected by landowners.

217 b. After the 6th or 10th year, once a district reaches 250
 218 or 500 qualified electors, respectively, ~~then~~ the positions of
 219 two board members whose terms are expiring shall be filled by
 220 qualified electors of the district, elected by the qualified
 221 electors of the district for 4-year terms. The remaining board
 222 member whose term is expiring shall be elected for a 4-year term
 223 by the landowners and is not required to be a qualified elector.
 224 Thereafter, as terms expire, board members shall be qualified
 225 electors elected by qualified electors of the district for a
 226 term of 4 years.

227 c. Once a district qualifies to have any of its board
 228 members elected by the qualified electors of the district, the
 229 initial and all subsequent elections by the qualified electors
 230 of the district shall be held at the general election in
 231 November. The board shall adopt a resolution if necessary to
 232 implement this requirement when the board determines the number

Page 8 of 9

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

596-03449A-13

2013972c2

233 of qualified electors as required by sub-subparagraph d., to
234 extend or reduce the terms of current board members.

235 d. On or before June 1 of each year, the board shall
236 determine the number of qualified electors in the district as of
237 the immediately preceding April 15. The board shall use and rely
238 upon the official records maintained by the supervisor of
239 elections and property appraiser or tax collector in each county
240 in making this determination. Such determination shall be made
241 at a properly noticed meeting of the board and shall become a
242 part of the official minutes of the district.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic TRANSPORTATION

Bill Number 972
(if applicable)

Name LOUIS ROTUNDO

Amendment Barcode _____
(if applicable)

Job Title _____

Address 302 PINESTRAW CIRCLE

Phone 407-699-9341

Street

ALTAMONTE SPRINGS FL

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing ALACHUA COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic Transportation

Bill Number 972
(if applicable)

Name Leticia Adams

Amendment Barcode _____
(if applicable)

Job Title Policy Director

Address 136 S. Bronough

Phone 521-1200

Tallahassee FL 32301
City State Zip

E-mail ladams@flchamber.com

Speaking: For Against Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations
Appropriations Subcommittee on Education
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

April 2, 2013

The Honorable John Thrasher
400 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Thrasher:

Senate Bill 972, relating to Transportation Development has been referred to the Committee on Rules. I am requesting your consideration on placing SB 972 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Dorothy L. Hukill".

Dorothy L. Hukill, District 8

cc: John Phelps, Staff Director of the Committee on Rules
Tamra Lyon, Administrative Assistant of the Committee on Rules

REPLY TO:

209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
 Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

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 Rules

BILL: CS/CS/SB 544

INTRODUCER: Rules Committee; Ethics and Elections Committee; and Senator Braynon

SUBJECT: Legislative Lobbying Requirements

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Fav/CS
2.	McVaney	McVaney	GO	Favorable
3.	Carlton	Phelps	RC	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 544 clarifies that the use of a public facility or public property provided from a governmental entity to a legislator for a public purpose is not an expenditure for purposes of the "legislative expenditure ban" in s. 11.045, F.S., regardless of whether the governmental entity is a principal. Unlike the current Rules of the Florida Senate Rules and Administrative Policy Manual of the Florida House of Representatives, this statutory exception does not include any requirement for approval by the presiding officers prior to the expenditure being made between the governmental entity and the legislator.

The bill also amends the "Legislative Expenditure Ban" in s. 11.045, F.S., by providing that a Legislator or legislative employee may, under certain circumstances, accept:

- Individual servings of nonalcoholic beverages; or,
- An unsolicited meal, beverages, or event or meeting registration fee.

The bill requires that the houses of the Legislature must adopt rules for reporting, within 15 days after attending the scheduled meeting, the following information:

- The date of the event;
- The name of the organization hosting the event;

- The topic or topics about which the member or employee spoke; and,
- The value of the meal accepted.

Finally, the changes made to s. 11.045(4), F.S., will expire on June 30, 2015.

This bill substantially amends s. 11.045, Florida Statutes.

II. Present Situation:

Section 11.045, F.S., contains provisions requiring legislative lobbying registration and legislative lobbyist compensation reports, and it contains the “legislative expenditure ban.”

Section 11.045(4)(a), F.S., provides in pertinent part, that “no lobbyist or principal shall make, directly or indirectly, and no member or employee of the legislature shall knowingly accept, directly or indirectly, any expenditure . . .” A “principal” is defined as “the person, firm, corporation, or other entity which has employed or retained a lobbyist.”¹ This appears to include governmental entities such as municipalities, counties, water management districts, universities, and colleges.

For purposes of this statute, the term “expenditure” means:

A payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).²

The term “lobbying” means “influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.”³

The following penalties can be imposed for violation of the legislative expenditure ban:

- A fine of not more than \$5,000;
- Reprimand;
- Censure;
- Probation; and/or
- Prohibition on lobbying for a period not to exceed 24 months.⁴

¹ Section 11.045(1)(i), F.S.

² Section 11.045(1)(c), F.S.

³ Section 11.045(1)(e), F.S.

⁴ Section 11.045(7), F.S.

Section 11.045(5), F.S., requires each house of the legislature to provide by rule a procedure for determining the applicability and interpretation of this section. To that end, the Florida Senate has adopted Senate Rule 9.8.

The pertinent portion of that Rule for this legislation is contained in Senate Rule 9.8, Part 1, section one, exception 6. The text of the rule reads:

6. Government to Government Expenditures

Real property or a facility owned or operated by a state or local public agency or entity that is a lobbying principal and transportation to, from, and at the location provided by that agency or entity may, with the prior approval of the respective state legislative presiding officer or his or her designee, be used without payment, by a member, committee, or staff of the Legislature for a public legislative purpose. Such purposes include publicly noticed legislative committee meetings and site visits to operations conducted by the public agency or entity. Allowable free uses also specifically include legislative district offices and sub-offices and the normally attendant utilities, parking, janitorial services, building maintenance, and telecommunications equipment and services common to a government building in which the office is located. Allowable free use does not extend to sports or entertainment venues; does not include food, beverages, or entertainment; and does not include free parking privileges at any location other than a district office or sub-office.

The Florida House of Representatives has included a similar approval process in its policies.⁵

III. Effect of Proposed Changes:

CS/CS/SB 544 creates a statutory exception to the definition of “expenditure” for a “government-to-government use.” The Committee Substitute states that a “government-to-government use” is the “use of a public facility or public property that is made available by one governmental entity to a legislator for a public purpose, regardless of whether either is required to register any person as a lobbyist.”

This statutory exception does not include the requirement of approval by the presiding officers currently contained in the both the Senate Rules and Administrative Policy Manual for the House of Representatives.

The bill also allows a member or employee of the Legislature to accept individual servings of nonalcoholic beverages provided by a lobbyist or a principal as a courtesy to attendees of a meeting.

The bill also allows a member or employee of the Legislature who is attending a scheduled meeting of an established membership organization that is a principal of a lobbyist as a featured

⁵Florida House of Representatives, “Administrative Policy Manual” dated November 2012, pages 9 and 10.

speaker, moderator, or participant of a panel discussion, to accept a meal, beverages, or event or meeting registration fee if they were not solicited by the member or employee. For purposes of this exemption, the established membership organization cannot have a membership that is primarily composed of lobbyists. If a member or employee accepts a meal, beverages, or event or meeting registration fee at such an event, he or she must file a report with the Secretary of the Senate or the Clerk of the House of Representatives within 15 days after attending the meeting. The report must contain, at a minimum, the date of the event, the name of the organization hosting the event, the topic or topics about which the member or employee spoke, and the value of the meal accepted. The bill clarifies that this report also satisfies the reporting requirement of s. 112.3149(6), F.S., concerning expenses related to the honorarium event. Each house of the Legislature must establish rules for such reporting and provide for publication on its website.

Finally, the bill provides that the changes made to s. 11.045(4), F.S., will expire on June 30, 2015. The statute will revert to the language in law on April 7, 2013. However, any amendments to s. 11.045(4), F.S., enacted by other legislation will continue to operate to the extent that they are not dependent upon the changes made this bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The “old” gifts law in Section 112.3148, F.S., which predates the “Legislative Expenditure Ban,” prohibits certain gifts in excess of \$100 to reporting individuals (anyone required to file financial disclosure, including legislators) and procurement employees. Section 112.3148, F.S., exempts gifts given by a state, county, and municipal governments (and certain other governmental organizations) valued at more than \$100 if a public purpose can be shown. Current law requires annual disclosure of such gifts on a CE Form 10. Because both s. 11.045, F.S., and s. 112.3148, F.S., apply to members of the Legislature, it is important to note that, if a member or employee were to accept use of a public facility or public property from a governmental entity as authorized by the bill, the member or employee would be required to disclose the gift on a CE Form 10.

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

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

CS/CS by Rules on April 9, 2013:

CS/CS/SB 544 differs from the original bill by permitting legislators and employees of the Legislature to accept individual servings of nonalcoholic beverages at a meeting. The bill also permits a member or legislative employee to accept a meal or beverage at, or admission fee for, a scheduled meeting of an established membership organization whose membership is not composed primarily of lobbyists. The bill requires specific items to be reported when a member or employee attends a scheduled meeting of an established membership organization. This report, which must be published on the website of the member's/employee's house, satisfies the requirement for disclosing honorarium-related expenses pursuant to s. 112.3149(6), F.S. Finally, the bill provides that the changes made to s. 11.045(4), F.S., by this act will expire after June 30, 2015. The statute will revert to the language as it existed on April 7, 2013. At reversion, the text will also include any amendments to s. 11.045(4) made by other law to the extent that they are not dependent upon the changes made herein.

CS by Ethics and Elections on March 11, 2013:

The CS differs from the original bill by permitting expenditures by a governmental entity, which are made for a public purpose, to a legislator rather than to another governmental entity.

B. Amendments:

None.



293924

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2013	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 34 and 35
insert:

(4) (a) Notwithstanding s. 112.3148, s. 112.3149, or any other ~~provision of~~ law to the contrary, no lobbyist or principal may ~~shall~~ make, directly or indirectly, and no member or employee of the Legislature may ~~shall~~ knowingly accept, directly or indirectly, any expenditure, except:

1. Floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session.

2. Individual servings of nonalcoholic beverages provided



293924

14 by a lobbyist or a principal as a courtesy to the attendees of a
15 meeting.

16 3. A member or employee of the Legislature, who attends a
17 scheduled meeting of an established membership organization
18 whose membership is not primarily composed of lobbyists, which
19 is also a principal, as a featured speaker, moderator, or
20 participant and provides a speech, address, oration, or other
21 oral presentation, may accept a meal, beverage, or event or
22 meeting registration fee. Such meal, beverage, and event or
23 meeting registration fee are expenses related to an honorarium
24 event under s. 112.3149.

25 (b) A ~~Ne~~ person may not ~~shall~~ provide compensation for
26 lobbying to any individual or business entity that is not a
27 lobbying firm.

28 (c) A member or employee of the Legislature who attends a
29 meeting and accepts a meal, beverage, or event or meeting
30 registration fee as permitted in subparagraph (a)3., is required
31 to file a report with the Secretary of the Senate or the Clerk
32 of the House of Representatives no later than 15 days after
33 attending the meeting. The report must contain, at a minimum,
34 the date of the event, the name of the organization hosting the
35 event, the topic or topics about which the member or employee
36 spoke, and the value of the meal accepted. Each house of the
37 Legislature shall establish by rule procedures for such
38 reporting and for the publication of such reports on its
39 website. Reports required to be filed by this subsection satisfy
40 the disclosure requirements in s. 112.3149(6).

41 (5) Each house of the Legislature shall provide by rule a
42 procedure by which a person, when in doubt about the



293924

43 applicability and interpretation of this section in a particular
44 context, may submit in writing the facts for an advisory opinion
45 to the committee of either house and may appear in person before
46 the committee. The rule shall provide a procedure by which:

47 (a) The committee shall render advisory opinions to any
48 person who seeks advice as to whether the facts in a particular
49 case would constitute a violation of this section.

50 (b) The committee shall make sufficient deletions to
51 prevent disclosing the identity of persons in the decisions or
52 opinions.

53 (c) All advisory opinions of the committee shall be
54 numbered, dated, and open to public inspection.

55 (6) Each house of the Legislature shall provide by rule for
56 keeping all advisory opinions of the committees relating to
57 lobbying firms, lobbyists, and lobbying activities. The rule
58 shall also provide that each house keep a current list of
59 registered lobbyists along with reports required of lobbying
60 firms under this section, all of which shall be open for public
61 inspection.

62 (7) Each house of the Legislature shall provide by rule
63 that a committee of either house investigate any person upon
64 receipt of a sworn complaint alleging a violation of this
65 section, s. 112.3148, or s. 112.3149 by such person; also, the
66 rule shall provide that a committee of either house investigate
67 any lobbying firm upon receipt of audit information indicating a
68 possible violation other than a late-filed report. Such
69 proceedings shall be conducted pursuant to the rules of the
70 respective houses. If the committee finds that there has been a
71 violation of this section, s. 112.3148, or s. 112.3149, it shall



293924

72 report its findings to the President of the Senate or the
73 Speaker of the House of Representatives, as appropriate,
74 together with a recommended penalty, to include a fine of not
75 more than \$5,000, reprimand, censure, probation, or prohibition
76 from lobbying for a period of time not to exceed 24 months. Upon
77 the receipt of such report, the President of the Senate or the
78 Speaker of the House of Representatives shall cause the
79 committee report and recommendations to be brought before the
80 respective house and a final determination shall be made by a
81 majority of said house.

82 (8) Any person required to be registered or to provide
83 information pursuant to this section or pursuant to rules
84 established in conformity with this section who knowingly fails
85 to disclose any material fact required by this section or by
86 rules established in conformity with this section, or who
87 knowingly provides false information on any report required by
88 this section or by rules established in conformity with this
89 section, commits a noncriminal infraction, punishable by a fine
90 not to exceed \$5,000. Such penalty shall be in addition to any
91 other penalty assessed by a house of the Legislature pursuant to
92 subsection (7).

93 Section 2. The amendment to s. 11.045(4), Florida Statutes,
94 shall expire June 30, 2015, and the text of that subsection
95 shall revert to that in existence on April 7, 2012, except that
96 any amendments to such text enacted other than by this act shall
97 be preserved and continue to operate to the extent that such
98 amendments are not dependent upon portions of text which expire
99 pursuant to this section.



293924

101 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

102 And the directory clause is amended as follows:

103 Delete lines 12 - 13

104 and insert:

105 Section 1. Paragraph (c) of subsection (1) of section
106 11.045, Florida Statutes, is amended, subsection (4) of that
107 section is reenacted and amended, and subsections (5) through
108 (8) of that section are reenacted, to read:

109

110

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

112 And the title is amended as follows:

113 Delete lines 2 - 8

114 and insert:

115 An act relating to legislative lobbying expenditures;
116 amending s. 11.045, F.S., and reenacting subsections
117 (4)-(8), relating to lobbying before the Legislature;
118 revising the term "expenditure" to exclude the use of
119 a public facility or public property that is made
120 available by a governmental entity to a legislator for
121 a public purpose, to exempt such use from legislative
122 lobbying requirements; providing exceptions when a
123 member or an employee of the Legislature may accept
124 certain expenditures made by a lobbyist or a
125 principal; providing for the future expiration and the
126 reversion as of a specified date of statutory text;
127 providing an effective date.

By the Committee on Ethics and Elections; and Senator Braynon

582-02221-13

2013544c1

1 A bill to be entitled
 2 An act relating to exemption from legislative lobbying
 3 requirements; amending s. 11.045, F.S.; revising the
 4 term "expenditure" to exclude the use of a public
 5 facility or public property that is made available by
 6 a governmental entity to a legislator for a public
 7 purpose, to exempt such use from legislative lobbying
 8 requirements; providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Paragraph (c) of subsection (1) of section
 13 11.045, Florida Statutes, is amended to read:
 14 11.045 Lobbying before the Legislature; registration and
 15 reporting; exemptions; penalties.—
 16 (1) As used in this section, unless the context otherwise
 17 requires:
 18 (c) "Expenditure" means a payment, distribution, loan,
 19 advance, reimbursement, deposit, or anything of value made by a
 20 lobbyist or principal for the purpose of lobbying. The term does
 21 not include:
 22 1. Contributions or expenditures reported pursuant to
 23 chapter 106 or federal election law, campaign-related personal
 24 services provided without compensation by individuals
 25 volunteering their time, any other contribution or expenditure
 26 made by or to a political party or affiliated party committee,
 27 or any other contribution or expenditure made by an organization
 28 that is exempt from taxation under 26 U.S.C. s. 527 or s.
 29 501(c)(4).

Page 1 of 2

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

582-02221-13

2013544c1

30 2. A government-to-government use, which is the use of a
 31 public facility or public property that is made available by a
 32 governmental entity to a legislator for a public purpose,
 33 regardless of whether the governmental entity is required to
 34 register any person as a lobbyist pursuant to this section.
 35 Section 2. This act shall take effect July 1, 2013.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 1 9 2013

Meeting Date

Topic _____ Bill Number 544
(if applicable)

Name BRIAN PITTS Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

normal fees required when registering a vehicle. Revenues from the use fee were deposited in the Florida Wildflower Foundation, Inc., to be used to establish native Florida Wildflower research programs to municipal, county, and community-based groups in the state.

The annual use fees shall be distributed to the Florida Wildflower Foundation, Inc., a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code. The proceeds shall be used to establish native Florida wildflower research programs, wildflower educational programs, and wildflower grant programs to municipal, county, and community-based groups in this state.

- The Florida Wildflower Foundation, Inc., shall develop procedures of operation, research contracts, education and marketing programs, and wildflower planting grants for Florida native wildflowers, plants, and grasses.
- A maximum of 15 percent of the proceeds from the sale of these plates may be used for administrative and marketing costs.
- If the Florida Wildflower Foundation, Inc., ceases to be an active nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, the proceeds from the annual use fee shall be deposited into the General Inspection Trust Fund created within the Department of Agriculture and Consumer Services. Any funds held by the Florida Wildflower Foundation, Inc., must be promptly transferred to the General Inspection Trust Fund.

In fiscal year 2011/2012, there were 15,497 vehicles registered using the Florida Wildflower specialty plate, with a total net revenue of \$154,970 accruing from use of the plate.²

Florida Salutes Veterans

The Florida Salutes Veterans specialty license plate was created by the 1989 Legislature. Persons wishing to register a vehicle with the plate must pay a \$15 annual use fee in addition to the normal fees required when registering a vehicle. Revenues from the use fee were deposited in the State Homes for Veterans Trust Fund to be used solely for the purposes of constructing, operating, and maintaining domiciliary and nursing homes for veterans, and promotion and marketing of the plate.

In 2008¹, the Legislature revised s. 320.08058(4)(b)(1), F.S., to direct 20 percent of the annual use fee to a direct-support organization² created under s. 292.055, F.S., (*i.e.*, the Florida Veterans Foundation, Inc.) for a period not to exceed 24 months from the date the organization was incorporated. In 2010, the statute was again amended³ so that currently, the distribution of the annual use fee requires 10 percent of the annual use fee to be distributed to the direct-support organization for a period not to exceed 48 months after the date the direct-support organization is incorporated. All remaining fees are to be deposited in the State Homes for Veterans Trust Fund, in the State Treasury.

In fiscal year 2011/2012, there were 22,660 vehicles registered using the Florida Salutes Veterans plate, with a total net revenue of \$456,220 accruing from use of the plate.

² <http://www.flhsmv.gov/das/acct/SPAdFees.pdf>
(last visited 3/19/2013)

The Florida Veterans Foundation, Inc.

The Florida Veterans Foundation, Inc. (foundation) was established as the Department of Veterans' Affairs direct support organization in 2008. The foundation exists to educate the public about the needs of veterans; and promote and aid charitable activities for the support of the livelihood and general welfare of Florida-resident veterans. The foundation is a Corporate Not-For-Profit organization under ch. 617, F.S., with one part-time employee, whose payroll and related expenses are administered by the State and reimbursed by the foundation. All other members of the organization serve on a volunteer basis. The foundation received \$35,749 in fiscal year 2011, and \$33,957 in fiscal year 2012 from the Florida Salutes Veterans specialty license plate annual use fee.⁴ In compliance with the provisions of s. 320.08058(4)(b)(1), F.S., this distribution expired June 30 2012.

III. Effect of Proposed Changes:

Section 320.08053, F.S., requires an increase in the annual use fee from \$15 to \$25 for the Florida Wildflower license plate.

Section 320.08058(27), F.S., authorizes an increase of 5 percent to the original 15 percent use of proceeds from the sale of the Florida Wildflower license plate. The Florida Wildflower Foundation, Inc., can use a maximum of 20 percent of the proceeds collected may be used for administrative and marketing costs.

Section 320.08058(4)(b)(1), F.S., revises and provides an increase from ten to twenty percent, the percentage of annual use fees accruing from sales of the Florida Salutes Veterans license plate that are distributed to the Florida Veterans' Foundation, Inc., and to allow for continued distribution of the use fees to the foundation by eliminating the expiration date.

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

Other Potential Implications:

The department recommends that the effective date be changed to October 1, 2013 to allow programming and administrative time to implement its provisions.

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:

Persons who purchase the Florida Wildflower specialty license plate will pay an additional \$10 for a total of \$25 for the annual use fee.

The bill also provides for continued distributions of annual use fees to the Florida Veterans Foundation, Inc., beyond the currently programmed expiration. The amounts of such distributions vary based on the number of license plates sold or renewed each year. Due to the increase from ten to twenty percent, near future distributions may be assumed to be approximately double the distribution of recent years. For comparison, the foundation received \$35,749 in fiscal year 2011, and \$33,957 in fiscal year 2012 from ten percent of the annual use fee.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Transportation Committee on March 21, 2013:

The CS adds provisions increasing from ten to twenty percent, the percentage of annual use fees accruing from sales of the Florida Salutes Veterans license plate that are distributed to the Florida Veterans' Foundation, Inc., and allowing for continued distribution of the use fees to the foundation by eliminating the expiration date.

B. Amendments:

None.

By the Committee on Transportation; and Senator Soto

596-02855-13

2013632c1

A bill to be entitled

An act relating to specialty license plates; amending s. 320.08056, F.S.; revising the annual use fee for the Florida Wildflower license plate; amending s. 320.08058, F.S.; revising provisions for distribution and use of fees collected from the sale of certain specialty license plates; providing an effective date.

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

Section 1. Paragraph (aa) of subsection (4) of section 320.08056, Florida Statutes, is amended to read:

320.08056 Specialty license plates.—

(4) The following license plate annual use fees shall be collected for the appropriate specialty license plates:

(aa) Florida Wildflower license plate, \$25 ~~\$15~~.

Section 2. Paragraph (b) of subsection (4) and subsection (27) of section 320.08058, Florida Statutes, is amended to read:
320.08058 Specialty license plates.—

(4) FLORIDA SALUTES VETERANS LICENSE PLATES.—

(b) The Florida Salutes Veterans license plate annual use fee shall be distributed as follows:

1. Twenty ~~Ten~~ percent shall be distributed to a direct-support organization created under s. 292.055 ~~for a period not to exceed 48 months after the date the direct support organization is incorporated.~~

2. Any remaining fees must be deposited in the State Homes for Veterans Trust Fund, which is created in the State Treasury. All such moneys are to be administered by the Department of

Page 1 of 3

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

596-02855-13

2013632c1

Veterans' Affairs and must be used solely for the purpose of constructing, operating, and maintaining domiciliary and nursing homes for veterans and for continuing promotion and marketing of the license plate, subject to the requirements of chapter 216.

(27) FLORIDA WILDFLOWER LICENSE PLATES.—

(a) The department shall develop a Florida Wildflower license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "State Wildflower" and "coreopsis" must appear at the bottom of the plate.

(b) The annual use fees shall be distributed to the Florida Wildflower Foundation, Inc., a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code. The proceeds must be used to establish native Florida wildflower research programs, wildflower educational programs, and wildflower grant programs to municipal, county, and community-based groups in this state.

1. The Florida Wildflower Foundation, Inc., shall develop procedures of operation, research contracts, education and marketing programs, and wildflower planting grants for Florida native wildflowers, plants, and grasses.

2. A maximum of 20 ~~15~~ percent of the proceeds from the sale of such plates may be used for administrative and marketing costs.

3. If the Florida Wildflower Foundation, Inc., ceases to be an active nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, the proceeds from the annual use fee shall be deposited into the General Inspection Trust Fund created within the Department of Agriculture and Consumer Services. Any funds held by the Florida Wildflower Foundation,

Page 2 of 3

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

596-02855-13

2013632c1

59 Inc., must be promptly transferred to the General Inspection
60 Trust Fund. The Department of Agriculture and Consumer Services
61 shall use and administer the proceeds from the use fee in the
62 manner specified in this paragraph.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

H-9-13
Meeting Date

Topic License TAG Fee Bill Number 632
(if applicable)

Name COLONEL MIKE PRENDERGAST Amendment Barcode _____
(if applicable)

Job Title Agency Head FL. DEPT VETERANS AFFAIRS

Address Rm 2105 CAPITOL Phone 487-1533-ext 7707
Street

Street

City

TLM

State

Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA DEPT of VETERANS AFFAIRS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-09-2013

Meeting Date

Topic VETS LICENSE TAG MONEY Bill Number SB 632
(if applicable)

Name FRANK MIRABELLA Amendment Barcode _____
(if applicable)

Job Title LEGISLATIVE AFFAIRS DIRECTOR

Address 521 N. ADAMS ST. Phone 850-510-3377
Street
JALL. FL. 32301
City *State* *Zip*

Speaking: For Against Information

Representing DISABLED AMERICAN VETERANS DEPT. OF FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic License TAG Fees Bill Number 632
(if applicable)

Name Jim Brodie Amendment Barcode _____
(if applicable)

Job Title Director, of LEGISLATIVE AFFAIRS

Address Rm 2105 C Phone _____
Street

City _____ State _____ Zip _____ E-mail _____

Speaking: For Against Information

Representing FL Dept of Veterans Affairs

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic License TAG Fees Bill Number 632
Name JOHN HAYNES Amendment Barcode _____ (if applicable)
Job Title CHAIRMAN, FL VETERANS FOUNDATION
Address Rm 2105 The CAPITOL Phone 487-1533
Street _____
City TLH State _____ Zip _____
E-mail _____

Speaking: For Against Information

Representing The Florida Veterans Foundation

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic Wildflower Bill

Bill Number 675-630
(if applicable)

Name Susan Goldstein

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____
Street

Phone 954 830-6300

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing FLA Wildflower Foundation & FSLPA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General Government
Community Affairs
Environmental Preservation and Conservation
Ethics and Elections

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

SENATOR DARREN SOTO

Deputy Democratic Whip
14th District

March 27, 2013

The Honorable John Thrasher
Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RECEIVED

MAR 27 2013

SENATE
RULES COMMITTEE

Chairman Thrasher,

I respectfully request that the Committee Substitute for Senate Bill 632, Florida Wildflower and Florida Salutes Veterans Specialty License Plates, be placed on the agenda as soon as possible.

The Committee Substitute for Senate Bill 632 would revise the annual use fee for the Florida Wildflower license plate to \$25 and the amount of proceeds from the sale of the plate to 20 percent that may be used to pay certain costs. The bill also increases the percentage of annual use fees accruing from the sales of the Florida Salutes Veterans license plate that are distributed to the Florida Veterans' Foundation, Inc. from ten to twenty percent, and allows for continued distribution of the use fees to the foundation by eliminating the expiration date.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto
State Senator, District 14

Cc: John Phelps, Staff Director
Tamra Lyon, Committee Administrative Assistant

REPLY TO:

□ 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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 Rules

BILL: CS/SB 778

INTRODUCER: Agriculture Committee; Senator Thompson and others

SUBJECT: Transactions in Fresh Produce Markets

DATE: April 5, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Halley	AG	Fav/CS
2.	Hendon	Hendon	CF	Favorable
3.	Brown	Hansen	AP	Favorable
4.	Weidenbenner	Phelps	RC	Favorable
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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

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

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 778 permits an owner or operator of a market that sells fresh produce to allow a non-competing third party, authorized by the United States Department of Agriculture (USDA) to be a Supplemental Nutrition Services Program (SNAP) retailer, to establish an Electronic Benefit Transfer (EBT) system to accept SNAP payments for the market's produce sellers, to the extent allowed by federal law and regulation. The bill applies only to a market that is not already an authorized SNAP retailer. The bill does not apply to a market with an existing EBT system for accepting SNAP benefits, nor does it require that a market operate an EBT system for its produce sellers. It also does not prohibit an authorized Food Nutrition Service produce seller from operating its own EBT system for its own customers.

This bill has no fiscal impact to the state.

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

The bill creates an undesignated section of law.

II. Present Situation:

The Center for Disease Control and Prevention (CDC) reports that research shows a healthy diet, rich in fruits and vegetables, provides a wide range of vitamins, minerals, and other natural substances that may help protect a body from chronic diseases.¹ The Food Research and Action Center (FRAC) observes that it is well documented that the SNAP program, formerly the Food Stamp Program, is beneficial to the health of children and adults and the well-being of low-income people in the United States.²

SNAP benefits are delivered through EBT cards, which are used like debit cards, at authorized food retailers. The federal government pays 100 percent of the SNAP benefits, but the federal and state governments share administrative costs.³ The SNAP program for retailers (formerly referred to as the food stamp program) and the certification of a retailer to use an EBT system to process SNAP payments are administered by the USDA Food and Nutrition Service.⁴

Many venues, especially in low income communities, do not accept SNAP. SNAP redemptions at farmers' markets accounted for only 0.01 percent of approximately \$64.4 billion in SNAP redemptions in FY 2010. Only 1,611 individual farmers and farmers' markets of the 6,132 operating nationwide in FY 2010 – about one fourth – accepted SNAP benefits.⁵

The Johns Hopkins Center for a Livable Future issued a report in the summer of 2012 detailing the relationship between nutritious food, farmers' markets, and the SNAP program. The report states that low-income consumers lack access to farmers' markets because the SNAP program cannot be used at many such markets since they lack wireless terminals to process EBT sales. According to the Johns Hopkins report, SNAP redemptions at farmers markets fell by half between 1992 and 2009 with the transition to EBT, which started in 1993. The report concludes that improving EBT technology at farmers markets has the potential to improve SNAP participants' diets and health by increasing access to fresh, local fruits and vegetables.⁶

As part of state and federal initiatives to encourage SNAP participants to eat more nutritious foods, a pamphlet ("SNAP/EBT at your Farmers' Market: Seven Steps to Success") was designed to help farmers' markets reach out to SNAP customers. In order to encourage greater EBT participation, the United States Department of Agriculture (USDA) provided grant money for markets to implement an EBT system, if they were not already authorized SNAP retailers on or before November 18, 2011. On July 27, 2012, the State of Florida announced the availability of the USDA grant money and engaged in a marketing campaign to encourage more farmers'

¹ See <http://www.cdc.gov/nutrition/everyone/fruitsvegetables/index.html>. (last visited Feb. 18, 2013).

² See <http://frac.org/wp-content/uploads/2011/06/SNAPstrategies.pdf>. (last visited Feb. 19, 2013).

³ Ibid.

⁴ See http://myflorida.custhelp.com/app/answers/detail/a_id/2675/~/accepting-food-stamps-in-my-business---how-do-i-become-an-ebt-retailer%3F. (last visited Feb. 19, 2013).

⁵ Ibid.

⁶ See http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-a-livable-future/_pdf/projects/ffp/farm_bill/Reuniting-Snap-Participants-and-Farmers-Markets.pdf. (last visited Feb. 19, 2013).

markets to participate in EBT. That effort has resulted in eight markets participating in the program with three more markets in the implementation phase.⁷

The Department of Agriculture and Consumer Services operates 13 “State Farmers’ Markets” under the authority contained in s. 570.07(18), F.S. Of the 13 markets, five have retail businesses that sell products to the public and three of them have installed EBT systems at their own expense.⁸ Other farmers’ markets are operated by local governments, not-for-profit organizations, private organizations, business development groups, and individuals, each of which has its own system for accepting payment for products.⁹ The USDA provided information in July 2012 that there were 127 farmers’ markets in Florida and 25 were participating in the SNAP program prior to the additional eight being brought into the program with the new funding.

There are various reasons why a farmers’ market does not have an EBT system. These include a decision by the owner not to accept SNAP benefits,¹⁰ a lack of access to electricity and phone lines needed for vendors to accept EBT cards, or a business decision not to fund the wireless technology and associated costs of implementation that are typically necessary to handle EBT sales.¹¹

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of Florida law relating to transactions in fresh produce markets. The bill provides the following definitions: “Market” is defined as a farmers’ market, community farmers’ market, flea market, or other open air market; and “SNAP” is defined as the federal Supplemental Nutrition Assistance Program.

The bill permits an owner or operator of a market that sells fresh produce, but is not a SNAP retailer, to allow specified, authorized third parties, which may not be a competing market, to accept SNAP benefits on behalf of the market’s produce sellers to the extent allowed by federal law and regulation. It requires the market owner or operator to reasonably accommodate the authorized third party in the implementation and operation of an EBT system.

The bill does not apply to a market selling fresh produce whose owner or operator has a system in place for accepting SNAP benefits. The bill does not prohibit an authorized Food Nutrition Service produce seller from operating its own EBT system for its customers’ transactions. Finally, the bill does not require a market owner or operator to create, operate, or maintain an EBT system on behalf of its produce sellers.

Section 2 provides an effective date of July 1, 2013.

⁷ Department of Children and Families *Staff Analysis and Economic Impact*, (Feb. 18, 2013) (on file with the Senate Agriculture Committee).

⁸ Correspondence dated February 20, 2013 from Office of Legislative Affairs, Department of Agriculture and Consumer Services. (on file with Senate Agriculture Committee).

⁹ Department of Children and Families Staff Analysis, p. 2.

¹⁰ *Ibid.*

¹¹ http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-a-livable-future/pdf/projects/ffp/farm_bill/Reuniting-Snap-Participants-and-Farmers-Markets.pdf, p.4.

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:

Additional SNAP beneficiaries will be able to use their EBT cards at farmers' markets. Authorized Food and Nutrition Service groups, associations, or other specified parties may be able to offer EBT services at participating farmers' markets.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Agriculture on March 4, 2013:

The CS changes the authoritative instruction regarding the duty of farmers' markets to allow third parties to implement and operate an EBT system to accept SNAP payments from being mandatory to being permissive. It clarifies that the bill applies to farmers' markets that are not already authorized SNAP retailers. It removes rule making authority given to the Department of Children and Families to administer the bill as DCF's

responsibility for administering the SNAP program is limited to determining eligibility and issue benefits.

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 the Committee on Agriculture; and Senator Thompson

575-01865-13

2013778c1

A bill to be entitled

An act relating to transactions in fresh produce markets; providing definitions; authorizing certain owners and operators of farmers' markets, community farmers' markets, flea markets, and other open-air markets selling fresh produce to allow authorized Food and Nutrition Service groups, associations, and third-party organizations to operate electronic benefits transfer systems in such markets; providing for applicability; providing an effective date.

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

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

(a) "Market" means a farmers' market, community farmers' market, flea market, or other open-air market.

(b) "SNAP" means the federal Supplemental Nutrition Assistance Program established under 7 U.S.C. ss. 2011 et seq.

(2) (a) The owner or operator of a market selling fresh produce who is not an authorized SNAP retailer may allow an authorized Food and Nutrition Service group or association of produce sellers that is actively participating in produce sales in the market, or an authorized Food and Nutrition Service third-party organization, to implement and operate an electronic benefits transfer system for purposes of accepting SNAP benefits in the market on behalf of the produce sellers to the extent and manner allowed by federal law and regulation.

(b) The authorized Food and Nutrition Service group, association, or third-party organization responsible for

Page 1 of 2

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

575-01865-13

2013778c1

implementation and operation of the electronic benefits transfer system may not be another market that competes with the market being served.

(c) The market owner or operator shall reasonably accommodate the authorized Food and Nutrition Service group, association, or third-party organization in the implementation and operation of an electronic benefits transfer system for purposes of accepting SNAP benefits.

(3) This section does not:

(a) Apply to a market selling fresh produce whose owner or operator has an electronic benefits transfer system for accepting SNAP benefits in the market.

(b) Prohibit an authorized Food and Nutrition Service produce seller in a market selling fresh produce from operating his or her own electronic benefits transfer system as part of his or her customer transaction options.

(c) Require a market owner or operator to create, operate, or maintain an electronic benefits transfer system on behalf of its produce sellers.

Section 2. This act shall take effect July 1, 2013.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on General
Government, *Vice Chair*
Community Affairs, *Vice Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Children, Families, and Elder Affairs
Commerce and Tourism
Transportation

SENATOR GERALDINE F. THOMPSON

12th District

JOINT COMMITTEE:
Joint Administrative Procedures Committee

April 2, 2013

The Honorable John Thrasher
400 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

RECEIVED

APR 02 2013

**SENATE
RULES COMMITTEE**

Dear Chair Thrasher:

I respectfully request *SB 778—Transactions in Fresh Produce Markets* be placed on the agenda of the Committee on Rules as soon as possible.

In Florida, farmers' markets were once a common source of fresh produce for people using food stamp benefits. Currently, only 21% of these markets process electronic benefit transfers (EBT) according to the USDA. Low-income people especially have limited access to healthy foods such as fresh fruits and vegetables.

This bill would make food sold at farmers' markets more accessible by authorizing vendors to form a third-party, FNS certified entity to operate an EBT system at farmers' markets.

Thank you for your consideration.

Sincerely,

Senator Geraldine Thompson, District 12
GT:dr

cc: John Phelps

REPLY TO:

- 511 W. South Street, Suite 204, Orlando, Florida 32805
- 224 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1066

INTRODUCER: Senator Richter

SUBJECT: Public Records/Dental Workforce Surveys

DATE: April 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	Favorable
2.	Naf	McVaney	GO	Favorable
3.	McElheney	Phelps	RC	Favorable
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 1066 makes confidential and exempt from public records requirements all personal identifying information contained in records provided by dentists or dental hygienists in response to dental workforce surveys and held by the Department of Health (DOH). The bill specifies circumstances under which the confidential and exempt information must be disclosed.

The bill provides for review and repeal of the exemption pursuant to the Open Government Sunset Review Act. The bill also provides a statement of public necessity as required by the Florida Constitution.

Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

This bill creates two undesignated sections of law.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or

employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Workforce Surveys

The DOH currently administers an optional workforce survey which dentists and dental hygienists may complete as part of their licensure renewal. For the 2009-2010 licensing cycle, the first time that this survey was offered, 89 percent of all dentists with active licenses responded.¹³ The survey was expanded to include dental hygienists for the 2010-2011 licensing cycle, and 87.9 percent responded.¹⁴

Unlike dentists and dental hygienists, physicians are required to respond to physician workforce surveys as a condition of license renewal.¹⁵ All personal identifying information contained in records provided by physicians in response to these workforce surveys is confidential and exempt under s. 458.3193, F.S., concerning allopathic physicians, and s. 459.0083, F.S., concerning osteopathic physicians.

III. Effect of Proposed Changes:

The bill provides that all personal identifying information contained in records provided by dentists or dental hygienists licensed under ch. 466, F.S., in response to dental workforce surveys and held by the DOH is confidential and exempt¹⁶ from public records requirements. Such information must be disclosed:

- With the express written consent of the individual, to whom the information pertains, or the individual's legally authorized representative;
- By court order upon a showing of good cause; or
- To a research entity, if the entity seeks the record or data pursuant to a research protocol approved by the DOH.

Such a research entity must maintain the records or data in accordance with the approved research protocol, and enter into a purchase and data-use agreement with DOH. The agreement must restrict the release of information that would identify individuals, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data remain the property of the DOH.

The bill authorizes the DOH to deny a research entity's request if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit.

¹³ DOH, *Report on the 2009-2010 Workforce Survey of Dentists*, available at: http://doh.state.fl.us/Family/dental/OralHealthcareWorkforce/2009_2010_Workforce_Survey_Dentists_Report.pdf (last viewed March 31, 2013).

¹⁴ DOH, *2013 Bill Analysis, Economic Statement, and Fiscal Note for SB 1066*, on file with the Senate Governmental Oversight and Accountability Committee.

¹⁵ Section 381.4018, F.S. Language requiring the submission of physician workforce surveys for license renewal can be found in s. 458.3191, F.S., for allopathic physicians and s. 459.0081, F.S., for osteopathic physicians.

¹⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. See footnote 6.

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.¹⁷

The bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to impact county or municipal government.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill could create a minimal fiscal impact for the DOH, because staff responsible for complying with public records requests could require training related to the new public records exemption. In addition, the DOH could incur costs associated with redacting the

¹⁷ Section 24(c), Art. I of the Florida Constitution.

confidential and exempt information prior to releasing a record. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of the DOH.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

By Senator Richter

23-00946-13

20131066__

A bill to be entitled

An act relating to public records; providing an exemption from public records requirements for information contained in dental workforce surveys submitted by dentists or dental hygienists to the Department of Health; providing exceptions to the exemption; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Confidentiality of certain information contained in dental workforce surveys.—

(1) All personal identifying information that is contained in records provided by dentists or dental hygienists licensed under chapter 466, Florida Statutes, in response to dental workforce surveys and held by the Department of Health is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, except such information shall be disclosed:

(a) With the express written consent of the individual to whom the information pertains or the individual's legally authorized representative.

(b) By court order upon a showing of good cause.

(c) To a research entity, if the entity seeks the records or data pursuant to a research protocol approved by the Department of Health, maintains the records or data in

Page 1 of 3

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

23-00946-13

20131066__

accordance with the approved protocol, and enters into a purchase and data-use agreement with the department, the fee provisions of which are consistent with s. 119.07(4), Florida Statutes. The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement must restrict the release of information that would identify individuals, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data issued pursuant to this paragraph remain the property of the department.

(2) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that personal identifying information concerning a dentist or dental hygienist licensed under chapter 466, Florida Statutes, who responds to a dental workforce survey be made confidential and exempt from disclosure. Candid and honest responses by licensed dentists or dental hygienists to the workforce survey will ensure that timely and accurate information is available to the Department of Health. The Legislature finds that the failure to maintain the confidentiality of such personal identifying information would prevent the resolution of important state interests to ensure the availability of dentists or dental hygienists in this state.

Page 2 of 3

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

23-00946-13

20131066__

59

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 / 9 / 2013

Meeting Date

Topic _____

Bill Number 1066
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic Public Records Exemption

Bill Number 1066
(if applicable)

Name Casey Stoutamire

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 118 E. Jefferson St.
Street

Phone 850-251-9394

Tallahassee FL 32301
City State Zip

E-mail cstoutamire@floridadental.org

Speaking: For Against Information

Representing Florida Dental Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

COMMITTEES:

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

JOINT COMMITTEE:

Joint Legislative Budget Commission

April 2, 2013

The Honorable John Thrasher, Chair
Senate Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Chairman Thrasher:

Senate Bill 1066, relating to Public Records/Dental Workforce Survey is now in the Committee on Rules. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

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

Garrett Richter

cc: John Phelps, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 102

INTRODUCER: Banking and Insurance Committee and Senator Detert

SUBJECT: Charitable Contributions

DATE: April 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oh	Burgess	BI	Fav/CS
2.	Siples	Hrdlicka	CM	Favorable
3.	Oh	Phelps	RC	Favorable
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 102 amends the Florida Uniform Fraudulent Transfer Act (FUFTA) to provide protection against creditors' clawback actions for charitable contributions received in good faith by qualified religious or charitable organizations. A charitable contribution made by a natural person, however, is subject to clawback actions if received within 2 years of the commencement of an action under FUFTA, a bankruptcy petition, or an insolvency proceeding, unless the transfer was consistent with the debtor's practices in making charitable contributions or the transfer did not exceed 15 percent of the debtor's gross annual income. The bill defines "charitable contribution" and "qualified religious or charitable entity" consistent with how those terms are defined in the Internal Revenue Code.

This bill substantially amends ss. 213.758, 718.704, 721.05, 726.102, and 726.109, F.S.

II. Present Situation:

Florida Uniform Fraudulent Transfer Act

According to the National Conference of Commissioners on Uniform State Laws, the Uniform Fraudulent Transfer Act (UFTA) has been enacted by 43 states, as well as the District of Columbia and the U.S. Virgin Island.¹ Florida adopted UFTA in 1987.² The Florida Uniform Fraudulent Transfer Act (FUFTA) provides a creditor with a means to reach assets that a debtor has transferred to another person to keep the assets from being used to satisfy a debt to the creditor, and defines the circumstances for application of the law. Under FUFTA, a transfer made or an obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- Without receiving a reasonably equivalent value in exchange of the transfer or obligation, and the debtor:
 - was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.³

In the situations described above, FUFTA provides a statutory remedy for creditors, primarily through a “clawback” action, whereby a prevailing creditor may have a debtor's fraudulent transfer or obligation made to a third party voided and surrendered back to the creditor. This remedy is subject to a 4 year statute of limitations, unless otherwise specified in s. 726.110, F.S.

FUFTA also provides protection for an innocent third party transferee, by specifying that a transfer is not voidable when the transferee is “a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.”⁴ However, FUFTA does not provide a specific exception for transfers received by charitable organizations, which generally do not give value in exchange for contributions. As a result, a charitable organization can be subject to a clawback action under FUFTA, even when it has already spent the contribution to provide its charitable service. Under an Illinois law that is similar to Florida's, the U.S. Court of Appeals for the Seventh Circuit ruled in favor of a creditor in a clawback action, even though the charitable organization received the contribution in good faith.⁵

¹ Uniform Law Commission, Legislative Fact Sheet – Fraudulent Transfer Act, *available at* <http://uniformlaws.org/LegislativeFactSheet.aspx?title=Fraudulent%20Transfer%20Act> (last visited Mar. 28, 2013).

² Chapter 87-79, L.O.F. The short title for ch. 726, F.S., is the “Uniform Fraudulent Transfer Act.”

³ Section 726.105, F.S.

⁴ Section 726.109, F.S.

⁵ *Scholes v. Lehmann*, 56 F.3d 750, 761 (7th Cir. 1995).

Federal Bankruptcy Code

Like the UFTA, the Federal Bankruptcy Code⁶ (code) allows certain fraudulent transfers made by a debtor to be voided. However, unlike the FUFTA, which relies on individual creditors to bring actions to void the transfer, the code empowers the bankruptcy trustee to bring the action to void the transfers for the benefit of all the debtor's creditors. The three most important sections of the Bankruptcy Code dealing with fraudulent transactions are ss. 548, 544, and 727.

Section 548

Section 548 of the code deals exclusively with fraudulent transfers and allows a bankruptcy trustee to void transactions involving actual or constructive fraud.⁷ The elements that must be proved to void a fraudulent transfer under this provision are substantially similar to those that are required under the FUFTA. Section 548 also parallels the FUFTA by providing a "value" defense which is virtually identical to the defense provided by FUFTA, and is available to a transferee that takes in good faith for a reasonably equivalent value.⁸ A transfer or contribution to a charitable or religious organization is not voidable if it does not meet the "value" defense when:

- The transfer was consistent with the practices of the debtor; or
- The transfer did not exceed 15 percent of the debtor's gross annual income.⁹

Unlike the FUFTA, however, a bankruptcy trustee may void only fraudulent transfers that occur within 2 years (1 year for cases commenced before April 20, 2005) from the date of the filing of the bankruptcy petition. A bankruptcy trustee seeking to void a transfer that occurred more than 1 year before a debtor's petition must rely on Section 544 of the code.

Section 544

Section 544 of the code is commonly referred to as the "strong-arm clause" and generally allows a bankruptcy trustee to set aside pre-bankruptcy transfers that are voidable under applicable state law.¹⁰ The strong-arm clause is primarily designed to protect unsecured creditors against unrecorded or unperfected interests and secret liens or any other prepetition claims against the debtor's assets at the time the case is commenced. The trustee has the rights and powers of a hypothetical creditor or purchaser, whether or not such a creditor or purchaser exists, to avoid certain transfers or obligations of the debtor.¹¹

The statute of limitations that applies to actions under Section 544, which also applies in Florida, would allow a transfer to be voided up to 4 years after it was made. Moreover, for actions based on actual fraud, the limitation period is the longer of 4 years or 1 year after the transfer reasonably could have been discovered.¹²

Section 727

⁶ 11 U.S.C. s. 101 et. seq.

⁷ 11 U.S.C. s. 548.

⁸ 11 U.S.C. s. 548(c).

⁹ 11 U.S.C. s. 548(a)(2)

¹⁰ 11 U.S.C. s. 544

¹¹ 8A C.J.S. *Bankruptcy* s. 705

¹² See s. 726.110(1), F.S.

Under Section 727, a bankruptcy debtor may be denied a discharge from debts if the debtor transferred property either within 1 year before the bankruptcy petition or during the bankruptcy case with actual intent to hinder, delay, or defraud a creditor. The effect of this penalty is to deny the debtor the benefits of bankruptcy and to allow creditors to continue to pursue the debtor even after bankruptcy. Some courts have interpreted this 1-year period broadly and denied a discharge based on transfers before the 1-year period if there is proof of “continuing concealment” by the debtor.¹³

III. Effect of Proposed Changes:

Section 1 amends s. 726.102, F.S., to create definitions for the terms “charitable contribution” and “qualified religious or charitable entity or organization consistent” with the definitions in the IRC. Charitable contributions are limited to cash or financial instruments.

Section 2 amends s. 726.109, F.S., to provide that the transfer of a charitable contribution received by a qualified religious or charitable entity or organization in good faith is not a fraudulent transfer.

The bill, however, provides that a charitable contribution from a natural person is a fraudulent transfer if it was received within 2 years of the earlier of the commencement of an action under FUFTA, the filing of a bankruptcy petition, or the commencement of an insolvency action. The bill then provides an exception for a transfer from a natural person if:

- The transfer was consistent with the practices of the debtor; or
- The transfer was received in good faith and the contribution did not exceed 15 percent of the gross annual income of the debtor.

Sections 3, 4, and 5 amend ss. 213.758, 718.704, and 721.05, F.S., respectively, to correct cross-references.

Section 6 provides an effective date of July 1, 2013, and specifies that it will apply to all charitable contributions made on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹³ An example of “continuing concealment” is when a debtor nominally transfers an asset before the 1-year period prior to bankruptcy, but retains an interest in it even after the bankruptcy filing (8B C.J.S. *Bankruptcy* s. 1035). See, e.g., *In the Matter of Hazen*, 37 B.R. 329 (M.D. Fla. 1983), denying debtor discharge because it failed to list in its bankruptcy schedules its remaining interest in assets fraudulently transferred to trust, even though fraudulent transfer occurred more than one year before bankruptcy.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, creditors would not be able to void certain transfers that they currently are able to void. Thus, fewer assets may be available to make creditors whole. However, charities may feel more secure about transfers they receive.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Banking and Insurance on March 14, 2013:

The CS makes the following changes:

- The original bill provided that a transfer of a charitable contribution received in good faith by a qualified religious or charitable entity is not a fraudulent transfer under ch. 726, F.S.; the CS specifically identifies s. 726.105(1)(b), F.S., rather than the entire chapter generally.
- The CS provides technical conforming changes, replacing the original bill's use of the term "transferor" with the term "debtor."
- The CS amends the effective date to July 1, 2013, and provides that bill applies prospectively to all charitable contributions made on or after that date.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Detert

597-02424-13

2013102c1

A bill to be entitled

An act relating to charitable contributions; amending s. 726.102, F.S.; defining the terms "charitable contribution" and "qualified religious or charitable entity or organization"; amending s. 726.109, F.S.; providing that a transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer; providing exceptions; amending ss. 213.758, 718.704, and 721.05, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), and (13) of section 726.102, Florida Statutes, are renumbered as subsections (4), (5), (6), (7), (8), (9), (10), (11), (13), (14), and (15), respectively, and new subsections (3) and (12) are added to that section, to read:

726.102 Definitions.—As used in ss. 726.101-726.112:

(3) "Charitable contribution" means a charitable contribution as that term is defined in s. 170(c) of the Internal Revenue Code of 1986, if that contribution consists of:

(a) A financial instrument as defined in s. 731(c)(2)(C) of the Internal Revenue Code of 1986; or

(b) Cash.

(12) "Qualified religious or charitable entity or organization" means:

(a) An entity described in s. 170(c)(1) of the Internal

Page 1 of 5

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

597-02424-13

2013102c1

Revenue Code of 1986; or

(b) An entity or organization described in s. 170(c)(2) of the Internal Revenue Code of 1986.

Section 2. Subsection (7) is added to section 726.109, Florida Statutes, to read:

726.109 Defenses, liability, and protection of transferee.—

(7) (a) The transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer under s. 726.105(1)(b).

(b) However, a charitable contribution from a natural person is a fraudulent transfer if the transfer was received on, or within 2 years before, the earlier of the date of commencement of an action under this chapter, the filing of a petition under the federal Bankruptcy Code, or the commencement of insolvency proceedings by or against the debtor under any state or federal law, including the filing of an assignment for the benefit of creditors or the appointment of a receiver, unless:

1. The transfer was consistent with the practices of the debtor in making the charitable contribution; or

2. The transfer was received in good faith and the amount of the charitable contribution did not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the charitable contribution was made.

Section 3. Paragraph (c) of subsection (1) of section 213.758, Florida Statutes, is amended to read:

213.758 Transfer of tax liabilities.—

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

Page 2 of 5

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

597-02424-13

2013102c1

59 (c) "Insider" means:

60 1. Any person included within the meaning of insider as
61 used in s. 726.102~~(7)~~; or

62 2. A manager of, a managing member of, or a person who
63 controls a transferor that is a limited liability company, or a
64 relative as defined in s. 726.102~~(11)~~ of any such persons.

65 Section 4. Subsection (4) of section 718.704, Florida
66 Statutes, is amended to read:

67 718.704 Assignment and assumption of developer rights by
68 bulk assignee; bulk buyer.—

69 (4) An acquirer of condominium parcels is not a bulk
70 assignee or a bulk buyer if the transfer to such acquirer was
71 made:

72 (a) Before the effective date of this part;

73 (b) With the intent to hinder, delay, or defraud any
74 purchaser, unit owner, or the association; or

75 (c) By a person who would be considered an insider under s.
76 726.102~~(7)~~.

77 Section 5. Subsection (10) of section 721.05, Florida
78 Statutes, is amended to read:

79 721.05 Definitions.—As used in this chapter, the term:

80 (10) "Developer" includes:

81 (a) 1. A "creating developer," which means any person who
82 creates the timeshare plan;

83 2.~~(b)~~ A "successor developer," which means any person who
84 succeeds to the interest of the persons in this subsection by
85 sale, lease, assignment, mortgage, or other transfer, but the
86 term includes only those persons who offer timeshare interests
87 in the ordinary course of business; and

597-02424-13

2013102c1

88 3.~~(e)~~ A "concurrent developer," which means any person
89 acting concurrently with the persons in this subsection with the
90 purpose of offering timeshare interests in the ordinary course
91 of business.

92 (b)~~(d)~~ The term "developer" does not include:

93 1. An owner of a timeshare interest who has acquired the
94 timeshare interest for his or her own use and occupancy and who
95 later offers it for resale; provided that a rebuttable
96 presumption exists ~~shall exist~~ that an owner who has acquired
97 more than seven timeshare interests did not acquire them for his
98 or her own use and occupancy;

99 2. A managing entity, not otherwise a developer, that
100 offers, or engages a third party to offer on its behalf,
101 timeshare interests in a timeshare plan which it manages,
102 provided that such offer complies with the provisions of s.
103 721.065;

104 3. A person who owns or is conveyed, assigned, or
105 transferred more than seven timeshare interests and who
106 subsequently conveys, assigns, or transfers all acquired
107 timeshare interests to a single purchaser in a single
108 transaction, which transaction may occur in stages; or

109 4. A person who acquires ~~has acquired~~ or has the right to
110 acquire more than seven timeshare interests from a developer or
111 other interestholder in connection with a loan, securitization,
112 conduit, or similar financing arrangement transaction and who
113 subsequently arranges for all or a portion of the timeshare
114 interests to be offered by a developer ~~one or more developers~~ in
115 the ordinary course of business on its ~~their~~ own behalf ~~behalfs~~
116 or on behalf of such person.

597-02424-13

2013102c1

117 ~~(c)~~ (e) A successor or concurrent developer ~~is~~ shall be
118 exempt from any liability inuring to a predecessor or concurrent
119 developer of the same timeshare plan, except as provided in s.
120 721.15(7), ~~provided that~~ This exemption ~~does~~ shall not apply to
121 any of the successor or concurrent developer's responsibilities,
122 duties, or liabilities with respect to the timeshare plan which
123 ~~that~~ accrue after the date the successor or concurrent developer
124 became a successor or concurrent developer, and ~~provided that~~
125 such transfer does not constitute a fraudulent transfer. ~~In~~
126 ~~addition to other provisions of law,~~ A transfer by a predecessor
127 developer to a successor or concurrent developer shall be deemed
128 fraudulent if the predecessor developer made the transfer:

129 1. With actual intent to hinder, delay, or defraud any
130 purchaser or the division; or

131 2. To a person that would constitute an insider under s.
132 726.102~~(7)~~.

133
134 ~~The provisions of~~ This paragraph ~~does~~ shall not ~~be construed to~~
135 relieve any successor or concurrent developer from the
136 obligation to comply with the provisions of any applicable
137 timeshare instrument.

138 Section 6. This act shall take effect July 1, 2013, and
139 applies to all charitable contributions made on or after that
140 date.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 19 2013

Meeting Date

Topic _____

Bill Number 102
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic SB 102 - Tab 20

Bill Number 102
(if applicable)

Name Michael Sheedy

Amendment Barcode
(if applicable)

Job Title Director of Public Policy

Address 201 W. Park Ave.

Phone 850-205-6824

Street Tall. FL 32301
City State Zip

E-mail

Speaking: For Against Information

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



The Florida Senate

Committee Agenda Request

To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 1, 2013

I respectfully request that **Senate Bill #102**, relating to Charitable Contributions, be placed on the:

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

A handwritten signature in black ink, reading "Nancy C. Detert".

Senator Nancy C. Detert
Florida Senate, District 28

from coal combustion have an adverse affect on human health and the environment.¹ The Clean Air Act (CAA) of 1970 authorized the National Ambient Air Quality Standards, which placed limitations on coal combustion emissions.² The CAA was significantly amended in 1990 and required more stringent emissions standards for coal power plants. Since the passage of the CAA, many coal plants have been retrofitted to reduce harmful emissions and new plants are constructed using advanced technologies that greatly reduce air-born pollutants.³

Fossil fuel combustion creates byproducts, referred to as FFCPs. The U.S. Environmental Protection Agency (EPA) estimates that between 130 and 140 million tons of FFCPs are produced each year in the United States.⁴ Landfills and surface impoundments are used to manage the majority of FFCPs. The remainder is sold for beneficial use in construction materials, such as concrete and wallboard, and for agricultural purposes.⁵ There are four types of FFCPs generated during coal combustion:⁶

- Fly ash is a non-combustible particulate matter that is transported from the combustion chamber by exhaust gases and accounts for approximately 74 percent of the ash generated.
- Bottom ash is heavier than fly ash, and collects in the bottom of boilers and accounts for approximately 20 percent of the ash generated.
- Boiler slag is formed when the ash melts under extreme heat and collects in wet-bottom boilers and accounts for approximately six percent of the ash generated.
- Flue-gas Desulfurization (FGD) material is created from the chemical process used to remove sulfur dioxide from combustion emissions by converting the sulfur dioxide to calcium sulfate (gypsum).

Federal Regulation of Fossil Fuel Combustion Products

In 1976, Congress passed the Federal Resource Conservation and Recovery Act (RCRA) in order to address the increase in industrial and municipal waste. The RCRA established a solid waste program under RCRA Subtitle D and a hazardous waste program under RCRA Subtitle C. The solid waste program allows states to develop plans to manage nonhazardous industrial solid waste and municipal solid waste, sets the criteria for solid waste disposal facilities, and prohibits the open dumping of solid waste. The hazardous waste program establishes a system for controlling hazardous waste from generation to ultimate disposal. In 1984, the RCRA was amended to provide more stringent hazardous waste management standards and required that the land disposal of hazardous waste be phased out. The RCRA was amended again in 1992 and

¹U.S. Energy Information Administration, *Energy in Brief*, http://www.eia.gov/energy_in_brief/article/role_coal_us.cfm (last visited Feb. 25, 2013).

² See 42 U.S.C. s. 7401-7671.

³ Institute for Energy Research, *The Facts About Air Quality and Coal-Fired Power Plants*, <http://www.instituteforenergyresearch.org/pdf/the-facts-about-air-quality-and-coal-fired-power-plants-final.pdf> (last visited Mar. 11, 2013). Examples of technological innovations include chemical scrubbers for combustion emissions and integrated gasification combined cycle power plants.

⁴EPA, *Coal Combustion Residuals*, <http://www.epa.gov/osw/nonhaz/industrial/special/fossil/coalashletter.htm> (last visited Feb. 21, 2013).

⁵ American Coal Ash Assoc., *Frequently Asked Questions*, <http://acaaffiniscap.com/displaycommon.cfm?an=1&subarticlenbr=5> (last visited Feb. 21, 2013).

⁶EPA, *Radiation Protection, Coal Ash*, <http://www.epa.gov/radiation/tenorm/coalandcoalash.html> (last visited Mar. 5, 2013).

1996 in order to strengthen the enforcement of the act at federal facilities and to provide regulatory flexibility for land disposal of certain wastes.⁷

In 1978 and 2000, the EPA determined that FFCPs are a “special waste” and exempt from federal hazardous waste regulations under RCRA Subtitle C.⁸ Coal combustion wastes that are disposed of in surface impoundments and landfills are regulated under RCRA Subtitle D. The EPA also determined that the beneficial use of FFCPs, other than minerefilling, does not pose a significant risk and does not require additional federal regulation.⁹

In 2010, the EPA proposed a rule to regulate the FFCP under more stringent requirements following a spill at the Tennessee Valley Authority’s Kingston Fossil Plant. Approximately 5.4 million cubic yards of fly ash sludge was released after a surface impoundment failed.¹⁰

The proposed EPA rule would apply to all FFCPs generated by electric utilities and independent power producers but would not include FFCPs that are beneficially used. The EPA is considering two options. The first would be to classify FFCPs as special waste subject to regulation under RCRA Subtitle C, which regulates hazardous wastes, when disposed of in landfills or surface impoundments. The second would exempt FFCPs from federal hazardous waste regulations under RCRA subtitle C but would require national minimum criteria under RCRA Subtitle D, which regulates solid wastes. Both alternatives include safety requirements for surface impoundments to prevent future releases.¹¹ The rulemaking process is ongoing and is expected to conclude in 2014.

Beneficial Use and Management of Fossil Fuel Combustion Products

The beneficial use of FFCPs is a multibillion dollar industry that creates a variety of products and provides numerous benefits to the environment by reducing the need for virgin material, emissions, and the amount of FFCPs disposed of in landfills.¹²

Fly ash can be used in portland cement concrete and provides greater durability than straight portland cement concrete.¹³ Bottom ash can be used in place of sand and gravel aggregates and can also be used for concrete blocks, shingles, asphalt, flowable fill and brick. Boiler slag can replace sand blasting grit and is silica free, which reduces the health risks associated with

⁷ EPA, *Waste Laws and Regulations, History of RCRA*, <http://www.epa.gov/osw/laws-regs/rcrahistory.htm> (last visited Mar. 6, 2013).

⁸ The EPA defined “special waste” in RCRA (1978) to be large volume waste that had a low potential to be hazardous and includes cement kiln dust, coal combustion waste, phosphate mining and processing waste, gas and oil drilling mud, and oil production brines. See <http://www.epa.gov/wastes/hazard/tsd/permit/tsd-regs/frns/43fr58946.pdf> (last visited Mar. 11, 2013).
⁹ 42 U.S.C. 6901, et. seq. See <http://www.epa.gov/osw/nonhaz/industrial/special/fossil/regs.htm> (last visited Mar. 12, 2013).

¹⁰ EPA, *Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities* (June 21, 2010), available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-RCRA-2009-0640-0352> (last visited Mar. 11, 2013).

¹¹ *Id.*

¹² American Coal Ash Association Educational Foundation, *Coal Ash Facts, About Coal Ash*, <http://www.coalashfacts.org/> (last visited Mar. 11, 2013).

¹³ U.S. Dept. of Transportation, *Fly Ash Facts for Highway Engineers*, <http://www.fhwa.dot.gov/pavement/recycling/fach03.cfm> (last visited Mar. 11, 2013).

blasting grit. FGD materials are used in 30 percent of the wallboard products manufactured in the United States and reduce the need to mine gypsum.¹⁴

Florida has 16 coal-powered electric plants that use approximately 25 million tons of coal per year and produce approximately 6.6 million tons of FFCPs per year. Approximately 40 percent of FFCPs produced in Florida are beneficially used. They are regulated on a case-by-case basis by the Department of Environmental Protection (DEP). The beneficial use of FFCPs is authorized under s. 403.7045(1)(f), F.S., which allows the beneficial use of industrial byproducts as long as they are not hazardous waste, are used for a beneficial purpose, and do not pose a public health threat. FFCPs that are not beneficially used are disposed of at designated solid waste disposal areas. Section 403.7222, F.S. prohibits hazardous waste landfills in Florida; because FFCPs are exempt from the hazardous waste designation, the DEP and utilities are able to manage the beneficial use and disposal of these materials in-state.¹⁵

III. Effect of Proposed Changes:

Section 1 creates s. 403.7047, F.S., providing for the regulation of fossil fuel combustion products (FFCP). It defines “fossil fuel combustion products” as fly ash; bottom ash; boiler slag; flue-gas emission control materials; gasifier slag; fluidized-bed combustion system products; and similar products produced from the operation of a fossil fuel-fired electric or steam generation facility, from a clean coal or other innovative technology process at a fossil fuel-fired electric or steam generation facility or from any combination thereof. The bill defines “fossil fuel-fired electric or steam generation facility” as any electric or steam generation facility that is fueled with coal, alone or in combination with petroleum, coke, oil, coal gas, natural gas, or other fossil fuels, or alternative fuels.

The bill defines “beneficial use” as the use of FFCPs in building products, and as substitutes for raw materials, necessary ingredients, or additives in products, used according to accepted industry practices.

The bill authorizes the beneficial use of FFCPs in asphalt, concrete or cement products, flowable fill roller compacted concrete structural fill and pavement aggregate. The bill defines “pavement aggregate” to be FFCPs that are substitutes for conventional aggregate, raw material or soil that is the sub-base material under a paved road, walkway, sidewalk, or parking lot. The bill defines “structural fill” to be the use of FFCPs as substitutes for conventional aggregate, raw material, or soil that is under an industrial or commercial building. The bill clarifies that “structural fill” does not include uses for general filling or grading operations, or valley fills.

The bill specifies that FFCPs in structural fill and pavement aggregate are not authorized to come into contact with groundwater, surface water, or wetlands. FFCPs used for this purpose are also prohibited from being placed within 100 feet of a potable well that might be used for human and livestock consumption. The bill prohibits the placement of the FFCPs from extending beyond the outside edge of the structure or pavement, and the placement of the structure or pavement must be completed as soon as possible after the placement of the FFCPs.

¹⁴See *supra* note 12.

¹⁵DEP, *Senate Bill 682 Agency Analysis* (Feb. 12, 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

The bill authorizes the use of flue-gas emission control material that meets the definition of gypsum and is used in accordance with the Florida Department of Agriculture and Consumer Services rules.¹⁶

The bill requires that the storage of FFCPs for beneficial use must be done in compliance with DEP rules and must not pose a significant risk to public health or violate air and water quality standards.

The bill specifies that the beneficial uses of FFCPs are not subject to regulation as a solid or hazardous waste under Part IV of ch. 403, F.S. However, the DEP may take appropriate action if the beneficial use is in violation of air or water quality standards or in violation of department rules. The department may also take action if the beneficial use poses a significant risk to public health. The bill does not limit the requirements that are applicable to the beneficial use established in ch. 403, F.S., ch. 376, F.S., or local or federal laws. The beneficial use of FFCPs is also subject to air pollution control limits, national pollution discharge elimination systems permits, and water quality certification pursuant to s. 401 of the Clean Water Act.

The bill does not limit the DEP's authority to approve the beneficial use of materials other than the FFCPs defined in the bill. The bill does not limit or modify the beneficial use of FFCPs that have been previously approved by the DEP or the recovery of products for beneficial use from landfills, impoundments, or storage areas.

Section 2 amends s. 403.7222, F.S., to allow for disposal of fly ash, bottom ash, boiler slag, or flue-gas emissions materials generated from the operation of fossil fuel-fired electric or steam generation facility, from a clean coal or other innovative technology process at a fossil fuel-fired electric or steam generation facility or any combination thereof.

Section 3 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁶ The United States Geological Survey defines gypsum as “[t]he mineral form of hydrated calcium sulfate.” See <http://pubs.usgs.gov/ha/ha747/pdf/definition.pdf> (last visited Mar. 25, 2013)

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

None.

B. Private Sector Impact:

An EPA decision to classify FFCPs as a hazardous waste would prohibit the beneficial use of FFCPs, as well as their in-state disposal; therefore, all of the FFCPs produced in Florida would have to be transported to an out-of-state hazardous waste disposal facility.¹⁷ The DEP estimates the cost to transport FFCPs as a hazardous waste to an out-of-state facility would be approximately \$2.5 billion per year. The increase in disposal costs would increase the retail cost approximately \$0.46 per kilowatt hour, or 44 percent.¹⁸

The DEP estimates that the beneficial use of FFCPs in the production of concrete provides a cost savings of approximately \$36 million a year.¹⁹

The construction industry would realize an indeterminate cost increase in construction materials if the beneficial use of FFCPs was prohibited as a result of the hazardous waste designation.²⁰

C. Government Sector Impact:

The state and local governments would realize an indeterminate cost increase in construction materials if the beneficial use of FFCPs was prohibited as a result of the hazardous waste designation.²¹ Publically-owned utilities using coal to generate power would see similar increases in disposal costs of FFCPs if they are designated as hazardous waste.

VI. Technical Deficiencies:

The bill removes the specific reference to use FFCPs as roofing materials, blasting grit, aggregate in products, wallboard products, plastic paints, insulation products, and extraction or recovery of materials and compounds retained within FFCPs but includes the term “building products” to incorporate these uses; however, the term “building products” is not defined in statute or rule.

¹⁷*Supra* note 15.

¹⁸Costs estimates were provided by the DEP and based on the assumption that the FFCPs would be transported to the hazardous waste facility in Emelle, AL. It is unclear how the EPA would regulate FFCPs as a hazardous waste, which may result in a higher cost than what was estimated by the DEP. The estimated relative increase in retail power cost for coal-fired electricity was calculated based on the December 2012 average regardless of the fuel mix utilized in Florida. The DEP cost analysis is on file with the Senate Committee on Environmental Preservation and Conservation.

¹⁹The costs savings for the production of concrete when using fly ash was calculated using the amount of concrete produced in Florida in 2010 and the amount of fly ash that FDOT specifies for use in cement mix.

²⁰The DEP was unable to calculate the total cost savings of using FFCPs due to a lack of information but reports, based on the concrete calculations alone, the savings of using FFCPs is economically significant.

²¹*Id.*

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Community Affairs Committee on April 2, 2013:

The committee substitute made technical and clarifying changes to the bill.

CS by Environmental Preservation and Conservation on March 21, 2013:

The committee substitute differs from the original bill in that it:

- removes the use of FFCPs for pipe-bedding aggregate, in metallurgical applications, as filtercloth precoat for sludge dewatering, and for the extraction or recovery of materials and compounds contained within fossil fuel combustion products;
- increases the distance FFCPs used in structural fill or pavement aggregate must be from a potable well to 100 feet;
- limits the placement of FFCPs used in structural fill or pavement aggregate to immediately under the structure or pavement to avoid any uncovered FFCPs;
- removes the specific reference to use FFCPs as roofing materials, blasting grit, aggregate in products, wallboard products, plastic paints, insulation products, and extraction or recovery of materials and compounds retained within FFCPs;
- includes the term “building products” to incorporate these uses;
- clarifies that the beneficial use of FFCPs in agriculture is limited to FGD material in accordance with FDACS;
- removes the use of FFCPs for land application, land reclamations, or pilot demonstration projects or any use that meets the criteria of s. 403.7045(1)(f), F.S.;
- removes the reference to “blowdown” for FFCPs.

- B. **Amendments:**

None.

By the Committees on Community Affairs; and Environmental
Preservation and Conservation; and Senator Simpson

578-03427-13

2013682c2

1 A bill to be entitled
2 An act relating to fossil fuel combustion products;
3 creating s. 403.7047, F.S.; providing definitions;
4 providing standards for storage of certain fossil fuel
5 combustion products; providing an exemption for
6 beneficial use of fossil fuel combustion products from
7 certain rules; providing that the act does not
8 prohibit the Department of Environmental Protection
9 from taking appropriate action to regulate a
10 beneficial use in certain circumstances; providing
11 that the act does not limit other requirements
12 applicable to the beneficial use of fossil fuel
13 combustion products; providing that the act does not
14 limit the recovery of beneficial use products or the
15 authority of the department to approve the beneficial
16 use of materials other than fossil fuel combustion
17 products; clarifying that the act does not limit or
18 modify any fossil fuel combustion product beneficial
19 use previously approved by the department; amending s.
20 403.7222, F.S.; excluding certain types of facilities
21 from provisions on hazardous waste landfills;
22 providing an effective date.
23
24 WHEREAS, fossil fuel combustion products are currently used
25 in a variety of beneficial applications, and
26 WHEREAS, beneficial use of fossil fuel combustion products
27 allows certain industries and end users to avoid the mining and
28 processing of virgin materials through the substitution of
29 fossil fuel combustion products for virgin materials, thereby

Page 1 of 7

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

578-03427-13

2013682c2

30 preserving natural resources and minimizing environmental
31 emissions, and
32 WHEREAS, beneficial use of fossil fuel combustion products
33 reduces the volume of materials placed in disposal facilities
34 and ultimately lowers overall energy consumption required for
35 processing and disposing of fossil fuel combustion products, and
36 WHEREAS, beneficial use of fossil fuel combustion products
37 promotes economic activity, and
38 WHEREAS, beneficial use of fossil fuel combustion products
39 is consistent with the purpose of Florida's Resource Recovery
40 and Management Act and furthers the purpose of the act by
41 encouraging waste reduction and recycling as a means of managing
42 solid waste and conserving resources, and
43 WHEREAS, after balancing all the competing needs of the
44 state, the Legislature has determined that it is in the state's
45 best interest to conserve natural resources, reduce overall
46 energy consumption, reduce or eliminate the need to dispose of
47 fossil fuel combustion products in disposal facilities, and
48 facilitate the development of readily available markets for
49 fossil fuel combustion products, NOW, THEREFORE,
50
51 Be It Enacted by the Legislature of the State of Florida:
52
53 Section 1. Section 403.7047, Florida Statutes, is created
54 to read:
55 403.7047 Regulation of fossil fuel combustion products.-
56 (1) As used in this section, the term:
57 (a) "Beneficial use" means the use of fossil fuel
58 combustion products in building products, and as substitutes for

Page 2 of 7

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

578-03427-13 2013682c2

59 raw materials, necessary ingredients, or additives in products,
 60 according to accepted industry practices, including the
 61 following:
 62 1. Asphalt, concrete or cement products, flowable fill, and
 63 roller-compacted concrete.
 64 2. Structural fill or pavement aggregate that meets the
 65 following requirements:
 66 a. The fossil fuel combustion product is not in contact
 67 with groundwater, surface water bodies, or wetlands and is not
 68 placed within 100 feet of a potable well that is being used or
 69 might be used for human or livestock water consumption; and
 70 b. The placement of the fossil fuel combustion product does
 71 not extend beyond the outside edge of the structure or pavement.
 72 Placement of the structure or pavement must be completed as soon
 73 as practicable after placement of the fossil fuel combustion
 74 product.
 75 3. Use of flue-gas emission control materials which meet
 76 the definition of gypsum and are used in accordance with
 77 applicable Florida Department of Agriculture and Consumer
 78 Services rules.
 79 4. Waste stabilization, or initial or intermediate cover
 80 material used for lined Class I or III landfills, provided that
 81 the material meets applicable department rules for landfill
 82 cover or a landfill's permit conditions for cover.
 83 5. Any other use that meets the criteria of
 84 s.403.7045(1)(f) or that is approved by the department prior to
 85 use as having an equivalent or reduced potential for
 86 environmental impacts, when used in equivalent quantities,
 87 compared to the substituted raw products or materials.

Page 3 of 7

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

578-03427-13 2013682c2

88 (b) "Fossil fuel combustion products" means fly ash, bottom
 89 ash, boiler slag, flue-gas emission control materials, and other
 90 non-hazardous materials, such as gasifier slag, fluidized-bed
 91 combustion system products, and similar combustion materials
 92 produced from the operation of a fossil fuel-fired electric or
 93 steam generation facility, from a clean coal or other innovative
 94 technology process at a fossil fuel-fired electric or steam
 95 generation facility, or from any combination thereof.
 96 (c) "Fossil fuel-fired electric or steam generation
 97 facility" means any electric or steam generation facility that
 98 is fueled with coal, alone or in combination with petroleum
 99 coke, oil, coal gas, natural gas, other fossil fuels, or
 100 alternative fuels.
 101 (d) "Pavement aggregate" means fossil fuel combustion
 102 products used as sub-base material under a paved road, sidewalk,
 103 walkway, or parking lot as a substitute for conventional
 104 aggregate, raw material, or soil.
 105 (e) "Structural fill" means the use of a fossil fuel
 106 combustion product as a substitute for a conventional aggregate,
 107 raw material, or soil under an industrial or commercial building
 108 or structure. Structural fill does not include uses of fossil
 109 fuel combustion products that involve general filling or grading
 110 operations or valley fills.
 111 (2) The storage of fossil fuel combustion products destined
 112 for beneficial use must comply with applicable department rules
 113 and be conducted in a manner that does not pose a significant
 114 risk to public health or violate applicable air or water quality
 115 standards.
 116 (3) Fossil fuel combustion products beneficially used in

Page 4 of 7

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

578-03427-13

2013682c2

117 accordance with this section are not subject to regulation as a
 118 solid or hazardous waste, but the department may take
 119 appropriate action if the beneficial use is demonstrated to be
 120 causing violations of applicable air or water quality standards
 121 or criteria in department rules, or if such beneficial use poses
 122 a significant risk to public health. This section does not
 123 limit any other requirements applicable to the beneficial use of
 124 fossil fuel combustion products established under this chapter
 125 or chapter 376 or under local or federal laws, including
 126 requirements governing air pollution control permits, national
 127 pollutant discharge elimination system permits, and water
 128 quality certifications pursuant to s. 401 of the Clean Water
 129 Act.

130 (4) Nothing in this section shall be construed to limit the
 131 department's authority to approve the beneficial use of
 132 materials other than fossil fuel combustion products as defined
 133 in this section pursuant to other provisions of this part. This
 134 section may not be construed to limit or otherwise modify any
 135 fossil fuel combustion product beneficial use previously
 136 approved by the department, use in the onsite construction of
 137 surface impoundments, roads, or similar works at fossil fuel-
 138 fired electric or steam generation facilities, or the recovery
 139 of these products for beneficial use from fossil fuel combustion
 140 product landfills, impoundments, or storage areas.

141 Section 2. Section 403.7222, Florida Statutes, is amended
 142 to read:

143 403.7222 Prohibition of hazardous waste landfills.—

144 (1) As used in this section, the term "hazardous waste
 145 landfill" means a disposal facility or part of a facility at

578-03427-13

2013682c2

146 which hazardous waste that has not undergone treatment is placed
 147 in or on land, including an injection well, which is not a land
 148 treatment facility. However, hazardous waste may not be disposed
 149 of through an injection well or other subsurface method of
 150 disposal, which is defined as a Class IV well in 40 C.F.R. s.
 151 144.6(d), except those Class I wells permitted for hazardous
 152 waste disposal as of January 1, 1992. The department shall
 153 annually review the operations of any such Class I well
 154 permitted as of January 1, 1992, and prepare a report analyzing
 155 any impact on groundwater systems. ~~Nothing in~~ This section may
 156 not shall be construed to refer to the products of membrane
 157 technology, including reverse osmosis, for the production of
 158 potable water where disposal is through a Class I well as
 159 defined in 40 C.F.R. s. 144.6(a), or to refer to remedial or
 160 corrective action activities conducted in accordance with 40
 161 C.F.R. s. 144.13.

162 (2) The Legislature declares that, due to the permeability
 163 of the soil and high water table in Florida, future hazardous
 164 waste landfills are prohibited. Therefore, the department may
 165 not issue a permit pursuant to s. 403.722 for a newly
 166 constructed hazardous waste landfill. However, if by executive
 167 order the Governor declares a hazardous waste management
 168 emergency, the department may issue a permit for a temporary
 169 hazardous waste landfill. Any such landfill shall be used only
 170 until such time as an appropriate alternative method of disposal
 171 can be derived and implemented. Such a permit may not be issued
 172 for a period exceeding 6 months without a further declaration of
 173 the Governor. A Class IV injection well, as defined in 40 C.F.R.
 174 s. 144.6(d), may not be permitted for construction or operation

578-03427-13

2013682c2

175 under this section.

176 (3) This section does not prohibit the department from
177 banning the disposal of hazardous waste in other types of waste
178 management units in a manner consistent with federal
179 requirements, except as provided under s. 403.804(2).

180 (4) This section does not apply to a disposal facility or
181 part of a facility that accepts fly ash, bottom ash, boiler
182 slag, or flue-gas emission control materials from the operation
183 of a fossil fuel-fired electric or steam generation facility,
184 from a clean coal or other innovative technology process at a
185 fossil fuel-fired electric or steam generation facility, or from
186 any combination thereof.

187 Section 3. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic Fossil Fuel Combustion Products

Bill Number SB 682
(if applicable)

Name Mary Jean Yan

Amendment Barcode _____
(if applicable)

Job Title Legislative Director

Address 3324 Charleston Rd
Street

Phone 850/519-7859

Tallahassee FL 32309
City State Zip

E-mail maryjeanyan@concept.net

Speaking: For Against Information

Representing Audubon Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Fossil Fuel

Bill Number SB 682
(if applicable)

Name Stephanie Kunkel

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1143 Albritton DR
Street

Phone 850-320-4208

Tallahassee FL 32301
City State Zip

E-mail Stef.Kunkel@gmail.com

Speaking: For Against Information

Representing Clean Water Action

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic CANAL ASH Bill Number 682
(if applicable)

Name DAVID CULLEN Amendment Barcode _____
(if applicable)

Job Title _____

Address 1674 UNIVERSITY DRWY #296 Phone 941-323-2404
Street

Sarasota FL 34243 E-mail cullean@sierraclub.com
City State Zip

Speaking: For Against Information

Representing SIERRA CLUB FL

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/13

Meeting Date

Topic Fossil Fuel Combustion

Bill Number 682
(if applicable)

Name FRANK MATTHEWS

Amendment Barcode _____
(if applicable)

Job Title ATTY

Address PO BOX 6526

Phone 850 252 7500

Street

City

TCH

FLA

State

32301

Zip

E-mail Frankm@tchslaw.com

Speaking: For Against Information

Representing FLA. ELEC. POWER PDR. GROUP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

April 11, 2013

Senator John Thrasher, Chairman
Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Senator Thrasher,

Please place Senate Bill 682, relating to fossil fuel combustion products, on the next Rules Committee agenda.

Please contact my office with any questions.
Regards,

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

Senator Wilton Simpson, 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 Rules

BILL: SB 1800

INTRODUCER: Committee on Governmental Oversight and Accountability

SUBJECT: OGSR/Employment Discrimination Complaints

DATE: April 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	McVaney		go SPB 7124 as introduced
2.	Naf	Phelps	RC	Pre-meeting
3.				
4.				
5.				
6.				

I. Summary:

SB 1800 is the result of an Open Government Sunset Review by the Governmental Oversight and Accountability Committee.

Current law provides a temporary public records exemption for all complaints and related records, held by any agency, that relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with certain hiring and employment practices. This part of the exemption expires when one of specified conditions occurs.

When the alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from public disclosure requirements. This part of the exemption does not expire.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2013, unless reenacted by the Legislature. This bill reenacts the exemption and makes clarifying changes.

The bill does not expand the scope of the public records exemption; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is *not* required for passage.

This bill amends section 119.071 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the

requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.¹³

The Act also requires specified questions to be considered during the review process.¹⁴

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.¹⁵ A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception¹⁶ to the exemption is created.¹⁷

Employment Discrimination

State law prohibits employment discrimination on the basis of race, color, religion, national origin, sex, handicap, or marital status.¹⁸ Most of the state and local agencies that responded to

Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ *Id.*

¹⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁵ An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

¹⁶ An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

¹⁷ See *State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

¹⁸ Section 760.10, F.S.

questionnaires sent pursuant to the Open Government Sunset Review indicated that they have a process for receiving, processing, and investigating complaints of employment discrimination.¹⁹

Florida Commission on Human Relations

The Florida Commission on Human Relations (commission) is an independent commission tasked with promoting and encouraging fair treatment and equal opportunity for all persons and mutual understanding and respect among economic, social, racial, religious, and ethnic groups.²⁰ Among its specified duties is that the commission must receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging a discriminatory practice.²¹

Public Records Exemption under Review

Current law provides a public records exemption for all complaints and other records in the custody of any agency²² which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities.²³ The exemption expires when:

- A finding is made relating to probable cause;
- The investigation of the complaint becomes inactive; or
- The complaint or any other records is made part of the official record of any hearing or court proceeding.²⁴

The exemption specifies that:

- It shall not affect any function or activity of the Florida Commission on Human Relations; and
- Any state or federal agency that is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties.²⁵

In addition, when the alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from public records disclosure requirements.²⁶ The exemption does not authorize the release of such records.

Professional staff of the Governmental Oversight and Accountability Committee conducted a review of the exemption pursuant to the Open Government Sunset Review Act and sent questionnaires to state and local agencies regarding their use of the exemption. Those agencies responding to the questionnaire indicated that there is a public necessity to continue to protect

¹⁹ The questionnaire responses are on file with the Senate Governmental Oversight and Accountability Committee.

²⁰ Section 760.05, F.S.

²¹ Section 760.06(5), F.S.

²² The meaning of "agency" is as defined in s. 119.011(2), F.S. (*see* footnote 4).

²³ Section 119.071(2)(g)1.a., F.S.

²⁴ *Id.*

²⁵ Section 119.071(2)(g)1.b. and c., F.S.

²⁶ Section 119.071(2)(g)2., F.S.

the information, and recommended reenactment of the public records exemption under review. Their responses²⁷ appear to indicate that the exemption is necessary to preserve the effective and efficient administration of government investigations of employment discrimination complaints.

III. Effect of Proposed Changes:

The bill removes the repeal date, thereby reenacting the public records exemption for employment discrimination complaints.

The bill also makes clarifying drafting changes.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

This bill reenacts but does not expand the scope of an existing public records exemption; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is *not* required for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

²⁷ On file with the Senate Governmental Oversight and Accountability Committee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

By the Committee on Governmental Oversight and Accountability

585-02859-13

20131800__

A bill to be entitled

An act relating to public records; amending s.

119.071, F.S., relating to a public records exemption for agency records concerning complaints of employment discrimination; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (g) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(g)1.~~a~~ All complaints and other records in the custody of any agency which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.

~~a.b~~ This exemption does provision shall not affect any function or activity of the Florida Commission on Human

Page 1 of 2

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

585-02859-13

20131800__

Relations.

~~b.e~~ Any state or federal agency that is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties.

2. ~~If an when the~~ alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2013.

Page 2 of 2

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

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the

requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.¹³

The Act also requires specified questions to be considered during the review process.¹⁴

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.¹⁵ A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception¹⁶ to the exemption is created.¹⁷

Paratransit Services

The Americans with Disabilities Act (ADA) requires public entities operating non-commuter fixed route transportation services to provide paratransit¹⁸ and other special transportation

Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ *Id.*

¹⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁵ An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

¹⁶ An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

¹⁷ *See State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

¹⁸ Federal law defines "paratransit" to mean "comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems" (49 C.F.R. § 37.3). Florida law defines "paratransit" to

services to individuals who are unable to use the fixed route system.¹⁹ The United States Department of Transportation has issued regulations specifying circumstances under which such services should be provided, including requirements for state and local entities to administer a process for determining eligibility. Eligible recipients for such services include:

- Individuals unable to get on or off public transit without assistance;
- Individuals who use a wheelchair lift on public transportation but such transportation is not available when needed; and
- Disabled individuals with a specific impairment that prevents travel to a point of departure or travel from a disembarking location.²⁰

Federal law also requires each state plan to provide Medicaid services to indicate that the Medicaid agency “will ensure necessary transportation for recipients to and from providers; and describe the methods that the agency will use to meet this requirement.”²¹ The Medicaid agency in Florida is the Agency for Health Care Administration (AHCA).

Florida law requires each agency that purchases transportation services for the transportation disadvantaged, including AHCA, to pay the rates established in the service plan or negotiated statewide contract, unless a more cost-effective method exists or if the community transportation coordinator (CTC) does not coordinate such services.²² These services are referred to as Medicaid Non-Emergency Transportation Services.

The Commission for the Transportation Disadvantaged²³ (commission) manages such services.²⁴ The commission contracts with a CTC and a planning agency in each county to provide transportation services.²⁵ The local coordinating board²⁶ assists the CTC in establishing eligibility guidelines.²⁷ Applicants must submit an application that requires the disclosure of medical and disability information, among other information.²⁸

mean “those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and provider of the service; paratransit service is provided by taxis, limousines, “dial-a-ride,” buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature (s. 427.011(9), F.S.).

¹⁹ 49 C.F.R. § 37, Subpart F.

²⁰ 49 C.F.R. § 37.123.

²¹ 42 C.F.R. § 431.53.

²² See s. 427.0135, F.S.

²³ Part I of ch. 427, F.S., establishes the commission for the purpose of coordinating transportation services provided to the transportation disadvantaged and a goal of providing cost-effective transportation by qualified community transportation coordinators or operators. The commission is housed within the Department of Transportation and consists of seven members appointed by the Governor. In addition, a technical working group advises the commission on issues of importance to the state. Section 427.012, F.S.

²⁴ The commission has been providing transportation for AHCA under a fixed fee basis since 2004. The current multi-year contract between the commission and AHCA was executed in December 2008. See “2012 Annual Performance Report,” Florida Commission for the Transportation Disadvantaged, at page 13, available at <http://www.dot.state.fl.us/ctd/docs/APR/2012/APR%202012%20Final.pdf> (last visited March 17, 2013).

²⁵ See ss. 427.013 and 427.0155, F.S.

²⁶ The local coordinating board is appointed and staffed by the metropolitan planning organization or designated official planning agency, and oversees and annually evaluates the CTC (see the “2012 Annual Performance Report” referenced in footnote 24, at page 12).

²⁷ Sections 427.0155(7) and 427.0157(4), F.S.

²⁸ See, for example, the Lake County application, available at

http://www.lakecountyfl.gov/pdfs/Community_Services/transportation_disadvantaged/aplication_for_paratransit_services.pdf

Public Records Exemption Under Review

Current law provides that personal identifying information of an applicant for or a recipient of paratransit services, held by an agency, is confidential and exempt from public records requirements.²⁹ The confidential and exempt information must be disclosed:

- With the express written consent of the applicant or recipient, or the legally authorized representative of such applicant or recipient;
- In a medical emergency, but only to the extent that is necessary to protect the health or life of the applicant or recipient;
- By court order upon a showing of good cause; or
- To another agency in the performance of its duties and responsibilities.³⁰

Pursuant to the Open Government Sunset Review Act, the public records exemption will repeal on October 2, 2013, unless reenacted by the Legislature.

III. Effect of Proposed Changes:

This bill deletes the public records exemption's repeal date, thereby reenacting the public records exemption for personal identifying information of an applicant for or a recipient of paratransit services that is held by an agency.

The bill also makes non-substantive drafting clarifications to the exemption.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

This bill reenacts but does not expand the scope of an existing public records exemption; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is *not* required for passage.

C. Trust Funds Restrictions:

None.

f (last visited March 17, 2013), and the Collier Area application, available at <http://www.colliergov.net/Modules/ShowDocument.aspx?documentid=39276> (last visited March 17, 2013).

²⁹ Section 119.071(5)(h)1., F.S.

³⁰ Section 119.071(5)(h)3., F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on March 21, 2013:

The CS differs from the original bill in that it makes non-substantive drafting clarifications to the public records exemption under review.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability;
and Transportation

585-02861-13

20131768c1

A bill to be entitled

An act relating to a review under the Open Government
Sunset Review Act; amending s. 119.071, F.S., relating
to an exemption from public records requirements for
personal identifying information of an applicant or
recipient of paratransit services; making clarifying
changes; saving the exemption from repeal under the
Open Government Sunset Review Act; providing an
effective date.

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

Section 1. Paragraph (h) of subsection (5) of section
119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of
public records.—

(5) OTHER PERSONAL INFORMATION.—

(h)1. Personal identifying information of an applicant for
or a recipient of paratransit services which is held by an
agency is confidential and exempt from s. 119.07(1) and s.
24(a), Art. I of the State Constitution.

2. This exemption applies to personal identifying
information of an applicant for or a recipient of paratransit
services which is held by an agency before, on, or after the
effective date of this exemption.

3. Confidential and exempt personal identifying information
shall be disclosed:

a. With the express written consent of the applicant or
recipient individual or the ~~individual's~~ legally authorized

Page 1 of 2

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

585-02861-13

20131768c1

representative of such applicant or recipient;

b. In a medical emergency, but only to the extent that is
necessary to protect the health or life of the applicant or
recipient individual;

c. By court order upon a showing of good cause; or

d. To another agency in the performance of its duties and
responsibilities.

~~4. This paragraph is subject to the Open Government Sunset
Review Act in accordance with s. 119.15, and shall stand
repealed on October 2, 2013, unless reviewed and saved from
repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2013.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

RECEIVED
APR 02 2013
SENATE
RULES COMMITTEE

To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 1, 2013

I respectfully request that **Senate Bill #1768**, relating to OGSR/Personal Information/Paratransit Services, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 22

Cc: John B. Phelps

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1042
 INTRODUCER: Senator Abruzzo
 SUBJECT: Public Meetings/Criminal Justice Commissions
 DATE: April 5, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.	Naf	McVaney	GO	Favorable
3.	Erickson	Phelps	RC	Favorable
4.				
5.				
6.				

I. Summary:

SB 1042 creates a public meetings exemption for that portion of a meeting of a local criminal justice commission (commission) at which public and private sector members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may foreseeably come before, the commission, provided that at any public meeting at which such matter is being considered the commission members publicly disclose the fact that the matter has been discussed.

The bill specifies that the exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity for the exemption as required by the Florida Constitution.

Because the bill creates a new public meetings exemption, the bill requires a two-thirds vote of each house of the Legislature for passage.

This bill creates a new, and as yet unnumbered, section of the Florida Statutes.

II. Present Situation:

Public Meetings Requirements

The Florida Constitution, in part, requires that all meetings of any local government at which official acts are to be taken or at which public business of such body is to be transacted or

discussed be open and noticed to the public.¹ Additionally, the Sunshine Law,² in part, requires all meetings of any board or commission of any local agency³ or authority at which official acts are to be taken to be noticed and open to the public.⁴

Only the Legislature may create an exemption to public meetings requirements.⁵ The Legislature may provide by general law passed by two-thirds vote of each chamber for the exemption of meetings from the requirements of Article I, Section 24, of the Florida Constitution, provided the exemption:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.⁶

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.⁷ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁸ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.⁹

Criminal Justice Commissions

Staff is aware of only two counties in Florida that currently have a “criminal justice commission”: the Sarasota County Criminal Justice Commission and the Palm Beach County Criminal Justice Commission.¹⁰ Membership of these commissions is comprised of members of

¹ Article I, Section 24(b), of the Florida Constitution.

² Section 286.011, F.S. Section 286.011, F.S., has been construed to apply to any gathering, formal or informal, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by that board or commission. *See generally Hough v. Stembridge*, 278 So.2d 288 (Fla. 3rd DCA 1973).

³ Section 119.01(2), F.S., defines an ‘agency’ as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

⁴ Section 286.011(1)-(2), F.S. The intent of the Legislature is to “extend application of the ‘open meeting’ concept so as to bind every ‘board or commission’ of the state, or of any county or political subdivision over which it has dominion or control.” *City of Miami Beach v. Berns*, 245 So.2d 38, 40 (Fla. 1971).

⁵ Article I, Section 24(c), of the Florida Constitution.

⁶ *Id.*

⁷ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

⁸ Section 119.15(3), F.S.

⁹ Section 119.15(6)(b), F.S.

¹⁰ In 2004, the Board of County Commissioners of Sarasota County passed Resolution number 2004-251, creating the Sarasota County Criminal Justice Commission. The ordinance is available at: http://www.co.sarasota.fl.us/HumanServices/documents/Resolution_CJC_Revised_112004.pdf . In 1988, Palm Beach County enacted Ordinance No. 88-16, creating the Palm Beach County Criminal Justice Commission. The ordinance is available under the “CJC Directory” tab at <http://www.co.palm-beach.fl.us/criminaljustice/youth/>.

both the public¹¹ and private sectors. These members collaborate to improve the criminal justice system in their community.¹² The commissions discuss a multitude of issues relating to local criminal justice practices, policies, and program developments.¹³ Other issues discussed at commission meetings include jail population and overcrowding, tracking crimes in the community, and matters of general policing.¹⁴

Such commissions are subject to the Sunshine Law, and current law does not provide a public meetings exemption for their meetings. Consequently, discussions that occur among members of a commission, such as those involving a sheriff, a public defender, or a state attorney, which involve matters that may foreseeably come before or are currently being considered by the commission, must be properly noticed and should be conducted as an open meeting in accordance with the Sunshine Law.¹⁵ Discussions among public officials on issues that do not require action by the commission do not violate the Sunshine Law.¹⁶

III. Effect of Proposed Changes:

The bill creates a public meetings exemption for that portion of a meeting of a duly constituted criminal justice commission (commission) at which public and private sector members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may, foreseeably come before the commission, if the commission members publicly disclose the fact that the matter has been discussed at any public meeting at which such matter is being considered.

The bill defines “duly constituted criminal justice commission” to mean an advisory commission created by municipal or county ordinance whose membership is comprised of private and public sector persons and whose purpose is to examine local criminal justice issues.

The bill also provides the following definitions by reference to s. 119.011, F.S.:

- “Active” has the following meanings:
 - Criminal intelligence information is considered “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
 - Criminal investigative information is considered “active” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
 - In addition, criminal intelligence and criminal investigative information are considered “active” while such information is directly related to pending prosecutions or appeals.

¹¹ *Id.*

¹² See <https://www.scgov.net/CJC/Pages/default.aspx> (Sarasota County) and <http://www.pbcgov.org/criminaljustice/aboutcjc> (Palm Beach County).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Attorney General Opinion 93-41.

¹⁶ *Id.*

- The word “active” does not apply to information in cases which are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.¹⁷
- “Criminal intelligence information” means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.¹⁸
 - “Criminal investigative information” means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.¹⁹
 - “Criminal intelligence information” and “criminal investigative information” do not include:
 - The time, date, location, and nature of a reported crime.
 - The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.
 - The time, date, and location of the incident and of the arrest.
 - The crime charged.
 - Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1), F.S., until released at trial if it is found that the release of such information would be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness, and impair the ability of a state attorney to locate or prosecute a codefendant.
 - Information and indictments except as provided in s. 905.26, F.S.²⁰

The extent to which access to such information may be provided to commission members is governed by s. 119.071, F.S. Generally, such information is exempt from public disclosure,²¹ meaning that an agency (the custodian of the record with the power to receive or communicate the record) is not prohibited from disclosing the record in all circumstances.²² Some of this information is confidential and exempt,²³ which means that this information may not be released by an agency to anyone other than to the persons or entities designated in the statute.²⁴

The bill specifies that the public meetings exemption is subject to the Open Government Sunset Review Act and provides the following statement of public necessity for the exemption as required by the Florida Constitution:

The Legislature finds that it is a public necessity that the portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss

¹⁷ Section 119.011(3)(d), F.S.

¹⁸ Section 119.011(3)(a), F.S.

¹⁹ Section 119.011(3)(b), F.S.

²⁰ Section 119.011(3)(c), F.S.

²¹ Section 119.071(2)(c)1., F.S.

²² See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).

²³ Section 119.071(2)(h) and (j)2., F.S.

²⁴ Attorney General Opinion 85-62.

active criminal intelligence information or active criminal investigative information currently being considered by, or which may foreseeably come before, the criminal justice commission be made exempt from public meeting requirements. If the meetings at which exempt information is discussed were open to the public, the purpose of the exemption from public records requirements found in chapter 119, Florida Statutes, would be defeated. The members of a criminal justice commission must be able to hear and discuss exempt information freely in order to make sound recommendations regarding strategies and activities that are best suited to protect the welfare of the people of this state. The ability to conduct meetings at which members can freely discuss and fully understand the details of active criminal intelligence information and active criminal investigative information is critical to the ability of a criminal justice commission to operate effectively.

The bill specifies that the exemption stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly created public meetings exemption. Because the bill creates a new public meetings exemption, the bill requires a two-thirds vote of each house of the Legislature for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created public meetings exemption. Because the bill creates a new public meetings exemption, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not appear to impact state or local government revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:**Drafting Comments**

The bill creates a definition for “duly constituted criminal justice commission;” however, that term and the terms “criminal justice commission” and “commission” are used interchangeably in the bill. The Legislature may wish to add “or commission” to the definition and conform the bill’s terminology.

The bill provides the public meetings exemption applies if, at any public meeting of a duly constituted criminal justice commission at which exempt information is being considered, the commission members publicly disclose the fact that the matter has been discussed. This structure implies that such disclosure will always occur after the matter has been discussed. The Legislature may wish to instead provide that the commission members must publicly disclose the fact that the matter has been *or will be* discussed.

It is unclear whether the term “considered” in line 38 has the same meaning as does the term “discussed” in line 39, or whether “considered” instead implies, for example, that a duly constituted criminal justice commission is voting to make a recommendation based upon confidential and exempt information that the commission previously discussed in private pursuant to the bill’s public meetings exemption.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

By Senator Abruzzo

25-00858A-13

20131042__

A bill to be entitled

An act relating to public meetings; providing definitions; providing an exemption from public meeting requirements for that portion of a meeting of a duly constituted criminal justice commission at which specified members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may foreseeably come before, the commission; providing for future review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Criminal justice commissions; public meetings exemption.-

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

(a) "Active" has the same meaning as provided in s. 119.011, Florida Statutes.

(b) "Criminal intelligence information" has the same meaning as provided in s. 119.011, Florida Statutes.

(c) "Criminal investigative information" has the same meaning as provided in s. 119.011, Florida Statutes.

(d) "Duly constituted criminal justice commission" means an advisory commission created by municipal or county ordinance whose membership is comprised of private and public sector persons and whose purpose is to examine local criminal justice issues.

25-00858A-13

20131042__

(2) That portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission is exempt from s. 286.011, Florida Statutes, and s. 24(b), Art. I of the State Constitution, provided that at any public meeting of the criminal justice commission at which such matter is being considered, the commission members publicly disclose the fact that the matter has been discussed.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may foreseeably come before, the criminal justice commission be made exempt from public meeting requirements. If the meetings at which exempt information is discussed were open to the public, the purpose of the exemption from public records requirements found in chapter 119, Florida Statutes, would be defeated. The members of a criminal justice commission must be able to hear and discuss exempt information freely in order to make sound recommendations regarding strategies and activities that are best suited to protect the welfare of the people of this state. The ability to conduct meetings at which members can

25-00858A-13

20131042__

59 freely discuss and fully understand the details of active
60 criminal intelligence information and active criminal
61 investigative information is critical to the ability of a
62 criminal justice commission to operate effectively.

63 Section 3. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Public Mtgs

Bill Number 1042
(if applicable)

Name RICHARD GENTRY

Amendment Barcode _____
(if applicable)

Job Title 2305 BRAEBURN CIRCLE

Address Tall, FL. 32309

Phone 251-1837

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Palm Bch Economic Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 / 9 / 2013

Meeting Date

Topic _____

Bill Number 1042
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 714

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senator Simmons

SUBJECT: Public Records/Proprietary Confidential Business Information

DATE: April 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Geeker/Wiehle	Caldwell	CU	Fav/CS
2.	Naf	McVaney	GO	Favorable
3.	Geeker/Wiehle	Phelps	RC	Pre-meeting
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
 B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

CS/SB 714 creates a public records exemption for proprietary confidential business information held by an electric utility in conjunction with a due diligence review of an electric project or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources.

The bill requires such proprietary confidential business information to be retained for one year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

The bill substantially amends section 119.0713 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion* 85-62, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

Applicability of Public Records Requirements to Electric Utilities

The three types of electric utilities defined in s. 366.02(2), F.S., are the municipal electric utility, investor-owned electric utility, and rural electric cooperative. Any records produced or held by investor-owned utilities or rural electric cooperatives are unaffected by public records law, as both are privately owned. Municipal utilities, however, are owned by a municipality and their records are subject to public records law.

Public Records Exemptions for Municipal Electric Utility Records

Current law provides a variety of public records exemptions relating to utilities,¹³ but there is no current exemption that applies to proprietary confidential business information held by a municipal electric utility in conjunction with a due diligence review of projects related to the provision of electric service.

III. Effect of Proposed Changes:

This bill creates a new public records exemption for proprietary confidential business information held by an electric utility that is subject to chapter 119, F.S., in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d), F.S.,¹⁴ or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources. The bill provides that such information is confidential and exempt¹⁵ from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. Further, the bill requires that such information be retained for one year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

The bill defines “proprietary confidential business information” as:

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ See, e.g., ss. 119.0713(3) (municipal utility bids to provide an item or service to customers), 364.183 (telecommunications), 366.093 (investor-owned electric and natural gas utilities), 367.156 (water and wastewater utilities), and 368.108, F.S. (natural gas transmission companies).

¹⁴ Section 163.01(3)(d), F.S., defines an “electric project” as:

1. Any plant, works, system, facilities, and real property and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, which is located within or without the state and which is used or useful in the generation, production, transmission, purchase, sale, exchange, or interchange of electric capacity and energy, including facilities and property for the acquisition, extraction, conversion, transportation, storage, reprocessing, or disposal of fuel and other materials of any kind for any such purposes.
2. Any interest in, or right to, the use, services, output, or capacity of any such plant, works, system, or facilities.
3. Any study to determine the feasibility or costs of any of the foregoing, including, but not limited to, engineering, legal, financial, and other services necessary or appropriate to determine the legality and financial and engineering feasibility of any project referred to in subparagraph 1. or subparagraph 2.

¹⁵ There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. See footnote 6.

[I]nformation, regardless of form or characteristics, which is owned or controlled by an electric utility that is subject to chapter 119, is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the providing entity or its business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. The term includes, but is not limited to:

1. Trade secrets.
2. Internal auditing controls and reports of internal auditors.
3. Security measures, systems, or procedures.
4. Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms.
5. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information.

This definition is substantially similar to existing provisions of law defining proprietary confidential business information.¹⁶

The bill provides that the public record exemption created by the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a statement of public necessity as required by the Florida Constitution.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage of a new public records exemption; therefore, this bill requires a two-thirds vote for passage.

¹⁶ See, e.g., ss. 364.183 (telecommunications), 366.093 (investor-owned electric and natural gas utilities), 367.156 (water and wastewater utilities), and 368.108, F.S. (natural gas transmission companies).

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a law creating a new public records exemption to contain a public necessity statement justifying the exemption; therefore, this bill contains a public necessity statement.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill may expand opportunities for private sector entities to do business with municipal electric utilities by creating a public records exemption for proprietary confidential business information, as the exemption may encourage more private sector participation and sharing of information.

C. Government Sector Impact:

Out-of-state energy generators and other technology providers may be more inclined to enter into public-private partnerships in Florida; to the extent that such electric partnerships would potentially improve the delivery, cost, or diversification of fuel or renewable energy, government-owned electric utilities and their customers may benefit.

Electric utilities may experience a minimal fiscal impact, because staff responsible for complying with public records requests could require training related to the new public records exemption. In addition, electric utilities could incur costs associated with redacting the confidential and exempt information. Such costs would be absorbed, however, as they are part of the day-to-day responsibilities of the electric utilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not define “trade secrets.”

VIII. Additional Information:

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

CS by Communications, Energy, and Public Utilities on March 6, 2013:

Expressly defines the term proprietary confidential business information instead of defining it by cross-reference.

- Clarifies that proprietary confidential business information is “held by” an electric utility instead of “provided to.”
- Consistently states that proprietary confidential business information is both confidential and exempt.
- Requires that the proprietary confidential business information be retained for one year by the electric utility.
- Deletes “propriety” and replaces with “proprietary.”

- 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 the Committee on Communications, Energy, and Public Utilities; and Senator Simmons

579-01973-13

2013714c1

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.0713, F.S.; providing an exemption from public
 4 records requirements for specified proprietary
 5 confidential business information held by an electric
 6 utility that is subject to ch. 119, F.S., in
 7 conjunction with a due diligence review of an electric
 8 project or a project to improve the delivery, cost, or
 9 diversification of fuel or renewable energy resources;
 10 providing for the retention of such information for a
 11 specified time; providing for future review and repeal
 12 of the exemption; providing a statement of public
 13 necessity; providing an effective date.
 14
 15 Be It Enacted by the Legislature of the State of Florida:
 16
 17 Section 1. Subsection (4) is added to section 119.0713,
 18 Florida Statutes, to read:
 19 119.0713 Local government agency exemptions from inspection
 20 or copying of public records.—
 21 (4) (a) Proprietary confidential business information means
 22 information, regardless of form or characteristics, which is
 23 held by an electric utility that is subject to chapter 119, is
 24 intended to be and is treated by the entity that provided the
 25 information to the electric utility as private in that the
 26 disclosure of the information would cause harm to the providing
 27 entity or its business operations, and has not been disclosed
 28 unless disclosed pursuant to a statutory provision, an order of
 29 a court or administrative body, or private agreement that

Page 1 of 4

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

579-01973-13

2013714c1

30 provides that the information will not be released to the
 31 public. Proprietary confidential business information includes,
 32 but is not limited to:
 33 1. Trade secrets.
 34 2. Internal auditing controls and reports of internal
 35 auditors.
 36 3. Security measures, systems, or procedures.
 37 4. Information concerning bids or other contractual data,
 38 the disclosure of which would impair the efforts of the electric
 39 utility to contract for goods or services on favorable terms.
 40 5. Information relating to competitive interests, the
 41 disclosure of which would impair the competitive business of the
 42 provider of the information.
 43 (b) Proprietary confidential business information held by
 44 an electric utility that is subject to chapter 119 in
 45 conjunction with a due diligence review of an electric project
 46 as defined in s. 163.01(3)(d) or a project to improve the
 47 delivery, cost, or diversification of fuel or renewable energy
 48 resources is confidential and exempt from s. 119.07(1) and s.
 49 24(a), Art. I of the State Constitution.
 50 (c) All proprietary confidential business information
 51 described in paragraph (b) shall be retained for one year after
 52 the due diligence review has been completed and the electric
 53 utility has decided whether or not to participate in the
 54 project.
 55 (d) This subsection is subject to the Open Government
 56 Sunset Review Act in accordance with s. 119.15, and shall stand
 57 repealed on October 2, 2018, unless reviewed and saved from
 58 repeal through reenactment by the Legislature.

Page 2 of 4

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

579-01973-13

2013714c1

59 Section 2. (1) The Legislature finds that it is a public
 60 necessity that proprietary confidential business information
 61 held by an electric utility that is subject to chapter 119,
 62 Florida Statutes, in conjunction with a due diligence review of
 63 an electric project as defined in s. 163.01(3)(d), Florida
 64 Statutes, or a project to improve the delivery, cost, or
 65 diversification of fuel or renewable energy resources be made
 66 confidential and exempt from public records requirements. The
 67 disclosure of such proprietary confidential business
 68 information, such as trade secrets, internal auditing controls
 69 and reports, security measures, systems, or procedures, or other
 70 information relating to competitive interests, could injure the
 71 provider in the marketplace by giving its competitors detailed
 72 insights into its financial status and strategic plans, thereby
 73 putting the provider at a competitive disadvantage. Without this
 74 exemption, providers might be unwilling to enter into
 75 discussions with the utility regarding the feasibility of future
 76 contracting. This could, in turn, limit opportunities the
 77 utility might otherwise have for finding cost-effective or
 78 strategic solutions for providing electric service or improving
 79 the delivery, cost, or diversification of fuel or renewable
 80 energy. This would put public providers of electric utility
 81 services at a competitive disadvantage by limiting their ability
 82 to optimize services to their customers and adversely affecting
 83 the customers of those utilities by depriving them of
 84 opportunities for rate reductions or other improvements in
 85 services.

86 (2) Proprietary confidential business information derives
 87 actual or potential independent economic value from not being

Page 3 of 4

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

579-01973-13

2013714c1

88 generally known to, and not being readily ascertainable by
 89 proper means by, other persons who can derive economic value
 90 from its disclosure or use. A utility, in performing the
 91 appropriate due diligence review of electric projects or
 92 projects to improve the delivery, cost, or diversification of
 93 fuel or renewable energy sources, may need to obtain proprietary
 94 confidential business information. Without an exemption from
 95 public records requirements for this information, it becomes a
 96 public record when received by an electric utility and must be
 97 disclosed upon request. Disclosure of any proprietary
 98 confidential business information under the public records law
 99 would destroy the value of that property and cause economic harm
 100 not only to the entity or person providing the information, but
 101 to the ratepayers through reduced competition for the provision
 102 of vital electric utility services.

103 (3) In finding that the public records exemption created by
 104 this act is a public necessity, the Legislature also finds that
 105 the public and private harm in disclosing such proprietary
 106 confidential business information significantly outweighs any
 107 public benefit derived from disclosure of the information and
 108 that the exemption created by this act will enhance the ability
 109 of electric utilities to optimize their performance, thereby
 110 benefiting the ratepayers.

111 Section 3. This act shall take effect July 1, 2013.

Page 4 of 4

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic Public Records/Proprietary Confid. Info.

Bill Number SB 714
(if applicable)

Name Suzanne Cross

Amendment Barcode _____
(if applicable)

Job Title Government Relations Specialist

Address 21 W. Church St.
Street
Jacksonville FL 32202
City State Zip

Phone 904-665-8331

E-mail gossSE@jea.com

Speaking: For Against Information

Representing JEA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



The Florida Senate

Committee Agenda Request

To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 2, 2013

I respectfully request that **Senate Bill 714**, relating to Public Records/Proprietary Confidential Business Information, be placed on the:

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

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

Senator David Simmons
Florida Senate, District 10

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 474

INTRODUCER: Committee on Governmental Oversight and Accountability and Committee on Military and Veterans Affairs, Space, and Domestic Security

SUBJECT: OGSR/Department of Veterans' Affairs/Direct-support Organization/Donor Information

DATE: April 5, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon	Ryon		ms SPB 7002 as introduced
2.	Naf	McVaney	GO	Fav/CS
3.	Ryon	Phelps	RC	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

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

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 474 is the result of an Open Government Sunset Review performed by the Committee on Military Affairs, Space, and Domestic Security.

Current law¹ provides a public records exemption for personal identifying information of a donor or prospective donor to the direct-support organization to the Florida Department of Veterans' Affairs who desires to remain anonymous. It also provides a public meetings exemption for portions of meetings of the direct-support organization during which the identity of a donor or prospective donor is discussed. The exemptions are subject to review under the Open Government Sunset Review Act² and will sunset on October 2, 2013, unless saved from repeal through reenactment by the Legislature.

¹ Section 252.055(9), F.S.

² Section 119.15, F.S.

The bill reenacts and makes drafting clarifications to the exemptions. The bill does not expand the scope of the exemptions; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is *not* required for passage.

The bill amends section 292.055(9) of the Florida Statutes.

II. Present Situation:

Public Records and Meeting Requirements

The State Constitution specifies requirements for public access to government records and meetings. It provides every person the right to inspect or copy any public record made or state, or received in connection with the official business of any public body, officer, or employee of the of persons acting on their behalf.³ The records of the legislative, executive, and judicial branches are specifically included.⁴ The State Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.⁵

In addition to the State Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁶ guarantees every person's right to inspect and copy any state or local government public record⁷ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ The Sunshine Law⁹ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.¹⁰

³ FLA. CONST., art. I, s. 24(a).

⁴ *Id.*

⁵ FLA. CONST., art. I, s. 24(b).

⁶ Chapter 119, F.S.

⁷ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 286.011, F.S.

¹⁰ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the State Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

Only the Legislature may create an exemption to public records or open meetings requirements.¹¹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹² Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹³ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁶

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.¹⁸

The Act also requires specified questions to be considered during the review process.¹⁹

¹¹ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).

¹² FLA. CONST., art. I, s. 24(c).

¹³ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁴ FLA. CONST., art. I, s. 24(c).

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

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ *Id.*

¹⁹ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.²⁰ A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception²¹ to the exemption is created.

The Florida Veterans Foundation

The 2008 Legislature authorized the establishment of a direct-support organization to provide assistance, funding, and support for the Florida Department of Veterans' Affairs (FDVA) in carrying out its mission of veterans' advocacy.²² Section 292.055(2), F.S., calls on the direct-support organization to organize and operate exclusively to:

- Obtain funds;
- Request and receive grants, gifts, and bequests of moneys;
- Acquire, receive, hold, invest, and administer in its own name securities, funds, or property; and
- Make expenditures to or for the benefit of the FDVA, Florida's veterans, and congressionally chartered veterans service organizations that have subdivisions that are incorporated in Florida.

The direct-support organization was incorporated as the Florida Veterans Foundation (FVF) in June 2008, and is governed by a voluntary board of directors appointed by the executive director of the FDVA.

The FVF's mission is to serve, support, and advocate for Florida veterans to improve their well-being. To achieve its mission, the FVF has identified the following goals that it aims to further with its charitable and educational programs and services:

- Keeping veterans in their homes safely and comfortably;
- Increasing a veteran's access to quality healthcare and benefits;
- Raising the public's awareness of psychological and neurological issues facing veterans;
- Reducing the stigma associated with seeking behavioral health treatment;
- Decreasing veterans suicide;
- Increasing veteran employment;
- Reducing chronic homelessness among veterans; and
- Providing justice-involved veterans an opportunity to receive treatment vice incarceration.²³

-
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
 - Is the record or meeting protected by another exemption?
 - Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁰ An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

²¹ An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

²² Chapter 2008-84, L.O.F.

²³ See Florida Veterans Foundation *Who We Are Brochure*.

http://www.floridaveteransfoundation.org/DOCs/Who_We_Are_Brochure.pdf (last visited March 19, 2013).

For the first four years of its existence, the FVF relied upon a combination of state funding and charitable donations to carry out its mission. When the 2008 Legislature authorized the establishment of the FVF, it also created a short-term state funding source to support the organization. The Legislature entitled the FVF to a percentage of the annual revenue collected from the sale of the Florida Salutes Veterans license plate.²⁴ This allocation of state revenue expired on June 30, 2012, and served as a substantial revenue source for the FVF for four years.²⁵ Moving forward, the FVF will rely solely on charitable donations to carry out its functions.

The table below illustrates the annual revenue the FVF received from charitable donations and license plate fees since its inception.²⁶

Table 1: Florida Veterans Foundation Annual Revenue Sources					
REVENUE SOURCE	FISCAL YEAR				TOTAL
	2008-09	2009-10	2010-11	2011-12	
Charitable Donations	\$108,870	\$54,124	\$29,327	\$205,136	\$397,457
License Plate Fees	\$68,052	\$63,199	\$26,644 ²⁷	\$23,325	\$181,220
Total	\$176,922	\$117,323	\$55,971	\$228,461	\$578,677

Current Exemption Under Review

Under s. 295.055(9), F.S., the following information held by the FVF is confidential and exempt from public records requirements:

- The identity of a donor or prospective donor to the foundation who wishes to remain anonymous; and
- All information identifying such donor or prospective donor.

In addition, portions of meetings of the FVF during which the identity of donors or prospective donors is discussed are exempt from public meetings requirements.

The exemptions are scheduled to expire on October 2, 2013, unless saved from repeal by the Legislature after a review under the Open Government Sunset Act.²⁸

²⁴ For fiscal years 2008-09 and 2009-10, the FVF was entitled to 20 percent of the Florida Salutes Veterans license plate revenue (Ch. 2008-84, L.O.F.). For fiscal years 2010-11 and 2011-12, the percentage which FVF was entitled was reduced to 10 percent of the license plate revenue (Ch. 2010-168, L.O.F.).

²⁵ Additionally, s. 320.08058(73), F.S., entitles the FVF to 20 percent of the annual revenues collected from the sale of the Veterans of Foreign Wars license plate, following its development. The Veterans of Foreign Wars license plate has not yet been developed and FVF representatives anticipate minimal revenues from the sale of the license plate.

²⁶ Data in Table 1 obtained from FVF Annual Reports and e-mail correspondence with FVF staff.

²⁷ For FY 2011 and FY 2012, the Florida Department of Highway Safety and Motor Vehicles over-distributed license plate revenue totaling \$29,872 to the FVF. As of Jan 13, 2012, the FVF had returned all of the over distribution. The license plate revenue amounts in the table represent the amount required by s. 320.08058(4), F.S., to be distributed to the FVF, not the actual amount that was erroneously distributed.

²⁸ Section 292.055(9)(c), F.S.

Senate professional staff of the Committee on Military Affairs, Space, and Domestic Security conducted a review of the exemptions in s. 292.055(9), F.S., as required by the Open Government Sunset Review Act.²⁹

In response to questions posed by Senate professional staff, representatives of the FVF reported that as of July 2012:³⁰

- No donors who have contributed to the FVF have requested anonymity; and
- The FVF has never received a request for personal information of individuals who have contributed to the FVF.

According to the FVF, although the FVF has not had the opportunity to utilize the exemptions, the exemptions are important to the success of the FVF's fundraising efforts.³¹ The FVF recommends the Legislature reenact the exemptions in order to preserve competitiveness with other charitable organizations which have such an exemption.³²

Representatives of the FVF provided the following circumstances to support reenactment of the exemptions:

- The FVF is now fully reliant upon the solicitation of charitable contributions to carry out its mission moving forward due to the recent discontinuation of state license plate revenue allocated to the FVF;³³
- The FVF plans to enhance donation solicitation practices and find new and creative ways to enhance the public's awareness of the FVF to increase donations;³⁴ and
- As the FVF continues to become more well-known among the public, the veteran community, and government leaders, expectations of the FVF's abilities to provide quality services to Florida veterans have and will continue to increase.³⁵

Based upon the Open Government Sunset Review of the exemption, professional staff of the Committee on Military Affairs, Space, and Domestic Security recommend the Legislature retain the exemptions established in s. 252.055(9), F.S. The exemptions for the identity of donors and potential donors to the FVF allows the FVF to effectively and efficiently secure charitable donations in order to fund the provision of quality services to veterans in Florida. To the extent that donors might be dissuaded from contributing to the FVF in the absence of the public records exemption, the ability of the FVF to raise funds might be limited.

²⁹ Section 119.15, F.S.

³⁰ Senate Military Affairs, Space, and Domestic Security Committee staff meeting with John Haynes, FVF Chairman, and Jim Brodie, FDVA Legislative Affairs Director. July 19, 2012.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Senate Military Affairs, Space, and Domestic Security Committee staff meeting with John Haynes, FVF Chairman, Barbara Radford, Executive Assistant to Chairman, and Jim Brodie, Legislative Affairs Director, FDVA. August 20, 2012.

III. Effect of Proposed Changes:

The bill deletes the Open Government Sunset Review repeal date, thereby continuing the exemptions for personal identifying information of donors or prospective donors to the Department of Veterans' Affairs direct-support organization.

The bill also clarifies that the public meetings exemption applies only to those portions of meetings at which the identity of a donor or prospective donor who wishes to remain anonymous as required by the public records exemption is discussed.

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

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

Not applicable. The bill does not appear to affect county or municipal government.

B. Public Records/Open Meetings Issues:

The bill reenacts existing public records and meetings exemptions. The bill does not expand the scope of the exemptions; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is *not* required for passage.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Governmental Oversight and Accountability on March 21, 2013:
The CS differs from the original bill in that it makes non-substantive drafting clarifications to the exemptions under review.

- B. **Amendments:**

None.

By the Committees on Governmental Oversight and Accountability;
and Military and Veterans Affairs, Space, and Domestic Security

585-02860-13

2013474c1

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 292.055, F.S., which
4 provides an exemption from public records requirements
5 for any identifying information of a donor or
6 prospective donor to the direct-support organization
7 of the Department of Veterans' Affairs, and an
8 exemption from public meetings requirements for
9 portions of meetings at which the identity of a donor
10 or prospective donor whose identity is confidential
11 and exempt is discussed; removing superfluous
12 language; saving the exemptions from repeal under the
13 Open Government Sunset Review Act; removing the
14 scheduled repeal of the exemptions; providing an
15 effective date.

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

18
19 Section 1. Subsection (9) of section 292.055, Florida
20 Statutes, is amended to read:

21 292.055 Direct-support organization.—

22 (9) CONFIDENTIALITY OF DONORS.—

23 (a) Any information identifying ~~The identity of~~ a donor or
24 prospective donor to the direct-support organization who desires
25 to remain anonymous, ~~and all information identifying such donor~~
26 ~~or prospective donor,~~ is confidential and exempt from ~~the~~
27 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
28 Constitution.

29 (b) Portions of meetings of the direct-support organization

Page 1 of 2

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

585-02860-13

2013474c1

30 during which the identity of a donor ~~donors~~ or prospective
31 donor, whose identity is confidential and exempt pursuant to
32 paragraph (a), ~~donors~~ is discussed are exempt from ~~the~~
33 ~~provisions of~~ s. 286.011 and s. 24(b), Art. I of the State
34 Constitution.

35 ~~(c) This subsection is subject to the Open Government~~
36 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
37 ~~repealed on October 2, 2013, unless reviewed and saved from~~
38 ~~repeal through reenactment by the Legislature.~~

39 Section 2. This act shall take effect October 1, 2013.

Page 2 of 2

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 376

INTRODUCER: Rules Committee and Senator Hays

SUBJECT: Public Records Exemption/Names of Spouses & Children of Law Enforcement & Other Specified Agency Personnel

DATE: April 9, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/1 amendment
2.	Naf	McVaney	GO	Favorable
3.	Dugger	Phelps	RC	Fav/CS
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
- B. AMENDMENTS..... Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

CS/SB 376 expands an existing public records exemption for certain personal identification and location information for specified law enforcement personnel (including Department of Corrections (DOC) officers and correctional probation officers, Department of Children and Families (DCF) abuse and exploitation investigators, Department of Health (DOH) child abuse investigators, and Department of Revenue (DOR) collection and enforcement personnel) and their spouses and children to also protect the *names* of such spouses and children.

The expanded exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

The bill contains a statement of public necessity as required by the Florida Constitution.

Because this bill expands a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

This bill amends section 119.071 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act¹⁰ requires a newly created or expanded public records exemption to be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.¹¹ It further provides that a public records exemption may be created

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(3), F.S.

or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.¹²

Current Exemptions Relating to Agency Personnel in s. 119.071(4)(d), F.S.

Section 119.071(4)(d), F.S., currently provides public records exemptions for specified personal identifying and locating information of the following current and former agency personnel, as well as for specified personal identifying and locating information of their spouses and children, including the following:

- Law enforcement and specified agency investigative personnel;¹³
- Certified firefighters;
- Justices and judges;
- Local and statewide prosecuting attorneys;
- Magistrates, administrative law judges, and child support hearing officers;
- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem;
- Department of Juvenile Justice direct-care personnel;
- Public defenders and criminal conflict and civil regional counsel;
- Department of Business and Professional Regulation investigators and inspectors; and
- County tax collectors.

Although there is some inconsistency among the types of information exempted,¹⁴ all of the exemptions protect the following information:

- The home addresses and telephone numbers of the agency personnel;
- The home addresses, telephone numbers, and places of employment of the spouses and children of the agency personnel; and
- The names and locations of schools and day care facilities attended by the children of the agency personnel.

Six of the exemptions protect the names of the following agency personnel's spouses and children:

- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad Litem;
- Department of Juvenile Justice direct-care personnel;

¹² Section 119.15(5)(b), F.S.

¹³ Included in this category are the following: active or former sworn or civilian law enforcement personnel, including Department of Corrections officers and correctional probation officers, Department of Children and Families abuse and exploitation investigators, Department of Health child abuse investigators, and Department of Revenue collection and enforcement personnel.

¹⁴ Some of the exemptions also protect photographs, dates of birth, and names of agency personnel and their spouses and children.

- Department of Business and Professional Regulation inspectors and investigators; and
- County tax collectors.

The exemption for active and former law enforcement personnel and their families does not protect the names of such personnel's spouses and children.

III. Effect of Proposed Changes:

The bill expands the public records exemption for personal identification and location information of active and former law enforcement personnel, including DOC officers and correctional probation officers, DCF abuse and exploitation investigators, DOH child abuse investigators, and DOR collection and enforcement personnel and their spouses and children to also protect the *names* of the spouses and children.

The bill provides for repeal of the expanded portion of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The Florida Constitution provides that no county or municipality may be bound by any general law that mandates it to spend funds or to take an action requiring the expenditure of funds unless the Legislature determines that such law fulfills an important state interest *and* one of specified other requirements is met.¹⁵ Certain laws, including those with an insignificant fiscal impact, are exempt from the mandates restrictions of the section.¹⁶

¹⁵ Article VII, s. 18(a) of the Florida Constitution. The specified other requirements are:

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

¹⁶ Article VII, s. 18(d) of the Florida Constitution. Other laws that are exempt from the mandates requirements are:

- Laws adopted to require funding of pension benefits existing on the effective date of Art. VII, s. 18 of the Florida Constitution;
- Criminal laws;
- Election laws;
- The general appropriations act;
- Special appropriations acts;
- Laws reauthorizing but not expanding then-existing statutory authority; and
- Laws creating, modifying, or repealing noncriminal infractions. *Id.*

This bill may require counties and municipalities to take actions that may require the expenditure of funds. If so, the bill may be exempt if the fiscal impact is insignificant.

If the bill has a significant fiscal impact, it may still qualify for an exception if it contains a legislative finding that it fulfills an important state interest *and* meets one of the other specified requirements. The bill does not contain a finding that it fulfills an important state interest; however, it may meet one of the other specified requirements. The expanded exemption applies to state and local governments; therefore, the bill appears to apply to all persons similarly situated. The bill also could meet one of the other specified requirements by passing with a two-thirds vote of the membership of each house.¹⁷

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. Because this bill expands a public records exemption, a two-thirds vote is required.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain a public necessity statement. Because this bill expands a public records exemption, it contains a public necessity statement.

Single Subject Requirement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain no other substantive provisions. Because this bill expands a public records exemption, it does not contain other substantive provisions.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill expands a public records exemption by including the names of spouses and children of specified agency personnel in the existing exemption that protects certain personal and identifying information. The public necessity statement provides that the exemption is necessary to protect those sworn and civilian law enforcement personnel and other specified investigative agency personnel who because of their job responsibilities often come into close contact with persons who want to harm them or their families. The public necessity statement further provides that the harm of releasing the names of spouses and children outweighs the public benefit of disclosing them.

¹⁷ A two-thirds vote of the membership of each house requires a two-thirds vote of *all* members, not just of those present and voting.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill could create a minimal impact on agencies, because staff responsible for complying with public records requests could require training related to the changes in the exemption. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Rules on April 9, 2013:

The CS clarifies that all law enforcement agency personnel that are specified in the current exemption are included in the bill's expanded protections.

B. Amendments:

None.

By Senator Hays

11-00297C-13

2013376__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; creating an exemption from public
 4 records requirements for the names of the spouses and
 5 children of active or former sworn or civilian law
 6 enforcement personnel, including children and spouses
 7 of correctional and correctional probation officers,
 8 personnel of the Department of Children and Families
 9 whose duties include the investigation of abuse,
 10 neglect, exploitation, fraud, theft, or other criminal
 11 activities, personnel of the Department of Health
 12 whose duties are to support the investigation of child
 13 abuse or neglect, and personnel of the Department of
 14 Revenue or local governments whose responsibilities
 15 include revenue collection and enforcement or child
 16 support enforcement; providing for future review and
 17 repeal of the exemption under the Open Government
 18 Sunset Review Act; providing a statement of public
 19 necessity; providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Paragraph (d) of subsection (4) of section
 24 119.071, Florida Statutes, is amended to read:

25 119.071 General exemptions from inspection or copying of
 26 public records.—

27 (4) AGENCY PERSONNEL INFORMATION.—

28 (d)1. For purposes of this paragraph, the term "telephone
 29 numbers" includes home telephone numbers, personal cellular

Page 1 of 9

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

11-00297C-13

2013376__

30 telephone numbers, personal pager telephone numbers, and
 31 telephone numbers associated with personal communications
 32 devices.

33 2.a.(I) The home addresses, telephone numbers, social
 34 security numbers, dates of birth, and photographs of active or
 35 former sworn or civilian law enforcement personnel, including
 36 correctional and correctional probation officers, personnel of
 37 the Department of Children and Families ~~Family Services~~ whose
 38 duties include the investigation of abuse, neglect,
 39 exploitation, fraud, theft, or other criminal activities,
 40 personnel of the Department of Health whose duties are to
 41 support the investigation of child abuse or neglect, and
 42 personnel of the Department of Revenue or local governments
 43 whose responsibilities include revenue collection and
 44 enforcement or child support enforcement; the home addresses,
 45 telephone numbers, social security numbers, photographs, dates
 46 of birth, and places of employment of the spouses and children
 47 of such personnel; and the names and locations of schools and
 48 day care facilities attended by the children of such personnel
 49 are exempt from s. 119.07(1).

50 (II) The names of the spouses and children of active or
 51 former sworn or civilian law enforcement personnel identified in
 52 sub-sub-subparagraph a.(I) are exempt from s. 119.07(1) and s.
 53 24(a), Art. I of the State Constitution.

54 (III) Sub-sub-subparagraph a.(II) is subject to the Open
 55 Government Sunset Review Act in accordance with s. 119.15, and
 56 shall stand repealed on October 2, 2018, unless reviewed and
 57 saved from repeal through reenactment by the Legislature.

58 b. The home addresses, telephone numbers, dates of birth,

Page 2 of 9

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

11-00297C-13 2013376
 59 and photographs of firefighters certified in compliance with s.
 60 633.35; the home addresses, telephone numbers, photographs,
 61 dates of birth, and places of employment of the spouses and
 62 children of such firefighters; and the names and locations of
 63 schools and day care facilities attended by the children of such
 64 firefighters are exempt from s. 119.07(1).

65 c. The home addresses, dates of birth, and telephone
 66 numbers of current or former justices of the Supreme Court,
 67 district court of appeal judges, circuit court judges, and
 68 county court judges; the home addresses, telephone numbers,
 69 dates of birth, and places of employment of the spouses and
 70 children of current or former justices and judges; and the names
 71 and locations of schools and day care facilities attended by the
 72 children of current or former justices and judges are exempt
 73 from s. 119.07(1).

74 d. The home addresses, telephone numbers, social security
 75 numbers, dates of birth, and photographs of current or former
 76 state attorneys, assistant state attorneys, statewide
 77 prosecutors, or assistant statewide prosecutors; the home
 78 addresses, telephone numbers, social security numbers,
 79 photographs, dates of birth, and places of employment of the
 80 spouses and children of current or former state attorneys,
 81 assistant state attorneys, statewide prosecutors, or assistant
 82 statewide prosecutors; and the names and locations of schools
 83 and day care facilities attended by the children of current or
 84 former state attorneys, assistant state attorneys, statewide
 85 prosecutors, or assistant statewide prosecutors are exempt from
 86 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

87 e. The home addresses, dates of birth, and telephone

11-00297C-13 2013376
 88 numbers of general magistrates, special magistrates, judges of
 89 compensation claims, administrative law judges of the Division
 90 of Administrative Hearings, and child support enforcement
 91 hearing officers; the home addresses, telephone numbers, dates
 92 of birth, and places of employment of the spouses and children
 93 of general magistrates, special magistrates, judges of
 94 compensation claims, administrative law judges of the Division
 95 of Administrative Hearings, and child support enforcement
 96 hearing officers; and the names and locations of schools and day
 97 care facilities attended by the children of general magistrates,
 98 special magistrates, judges of compensation claims,
 99 administrative law judges of the Division of Administrative
 100 Hearings, and child support enforcement hearing officers are
 101 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 102 Constitution if the general magistrate, special magistrate,
 103 judge of compensation claims, administrative law judge of the
 104 Division of Administrative Hearings, or child support hearing
 105 officer provides a written statement that the general
 106 magistrate, special magistrate, judge of compensation claims,
 107 administrative law judge of the Division of Administrative
 108 Hearings, or child support hearing officer has made reasonable
 109 efforts to protect such information from being accessible
 110 through other means available to the public.

111 f. The home addresses, telephone numbers, dates of birth,
 112 and photographs of current or former human resource, labor
 113 relations, or employee relations directors, assistant directors,
 114 managers, or assistant managers of any local government agency
 115 or water management district whose duties include hiring and
 116 firing employees, labor contract negotiation, administration, or

11-00297C-13 2013376
 117 other personnel-related duties; the names, home addresses,
 118 telephone numbers, dates of birth, and places of employment of
 119 the spouses and children of such personnel; and the names and
 120 locations of schools and day care facilities attended by the
 121 children of such personnel are exempt from s. 119.07(1) and s.
 122 24(a), Art. I of the State Constitution.

123 g. The home addresses, telephone numbers, dates of birth,
 124 and photographs of current or former code enforcement officers;
 125 the names, home addresses, telephone numbers, dates of birth,
 126 and places of employment of the spouses and children of such
 127 personnel; and the names and locations of schools and day care
 128 facilities attended by the children of such personnel are exempt
 129 from s. 119.07(1) and s. 24(a), Art. I of the State
 130 Constitution.

131 h. The home addresses, telephone numbers, places of
 132 employment, dates of birth, and photographs of current or former
 133 guardians ad litem, as defined in s. 39.820; the names, home
 134 addresses, telephone numbers, dates of birth, and places of
 135 employment of the spouses and children of such persons; and the
 136 names and locations of schools and day care facilities attended
 137 by the children of such persons are exempt from s. 119.07(1) and
 138 s. 24(a), Art. I of the State Constitution, if the guardian ad
 139 litem provides a written statement that the guardian ad litem
 140 has made reasonable efforts to protect such information from
 141 being accessible through other means available to the public.

142 i. The home addresses, telephone numbers, dates of birth,
 143 and photographs of current or former juvenile probation
 144 officers, juvenile probation supervisors, detention
 145 superintendents, assistant detention superintendents, juvenile

11-00297C-13 2013376
 146 justice detention officers I and II, juvenile justice detention
 147 officer supervisors, juvenile justice residential officers,
 148 juvenile justice residential officer supervisors I and II,
 149 juvenile justice counselors, juvenile justice counselor
 150 supervisors, human services counselor administrators, senior
 151 human services counselor administrators, rehabilitation
 152 therapists, and social services counselors of the Department of
 153 Juvenile Justice; the names, home addresses, telephone numbers,
 154 dates of birth, and places of employment of spouses and children
 155 of such personnel; and the names and locations of schools and
 156 day care facilities attended by the children of such personnel
 157 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 158 Constitution.

159 j. The home addresses, telephone numbers, dates of birth,
 160 and photographs of current or former public defenders, assistant
 161 public defenders, criminal conflict and civil regional counsel,
 162 and assistant criminal conflict and civil regional counsel; the
 163 home addresses, telephone numbers, dates of birth, and places of
 164 employment of the spouses and children of such defenders or
 165 counsel; and the names and locations of schools and day care
 166 facilities attended by the children of such defenders or counsel
 167 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 168 Constitution.

169 k. The home addresses, telephone numbers, and photographs
 170 of current or former investigators or inspectors of the
 171 Department of Business and Professional Regulation; the names,
 172 home addresses, telephone numbers, and places of employment of
 173 the spouses and children of such current or former investigators
 174 and inspectors; and the names and locations of schools and day

11-00297C-13 2013376__
 175 care facilities attended by the children of such current or
 176 former investigators and inspectors are exempt from s. 119.07(1)
 177 and s. 24(a), Art. I of the State Constitution if the
 178 investigator or inspector has made reasonable efforts to protect
 179 such information from being accessible through other means
 180 available to the public. This sub-subparagraph is subject to the
 181 Open Government Sunset Review Act in accordance with s. 119.15
 182 and shall stand repealed on October 2, 2017, unless reviewed and
 183 saved from repeal through reenactment by the Legislature.

184 1. The home addresses and telephone numbers of county tax
 185 collectors; the names, home addresses, telephone numbers, and
 186 places of employment of the spouses and children of such tax
 187 collectors; and the names and locations of schools and day care
 188 facilities attended by the children of such tax collectors are
 189 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 190 Constitution if the county tax collector has made reasonable
 191 efforts to protect such information from being accessible
 192 through other means available to the public. This sub-
 193 subparagraph is subject to the Open Government Sunset Review Act
 194 in accordance with s. 119.15 and shall stand repealed on October
 195 2, 2017, unless reviewed and saved from repeal through
 196 reenactment by the Legislature.

197 3. An agency that is the custodian of the information
 198 specified in subparagraph 2. and that is not the employer of the
 199 officer, employee, justice, judge, or other person specified in
 200 subparagraph 2. shall maintain the exempt status of that
 201 information only if the officer, employee, justice, judge, other
 202 person, or employing agency of the designated employee submits a
 203 written request for maintenance of the exemption to the

11-00297C-13 2013376__
 204 custodial agency.

205 4. The exemptions in this paragraph apply to information
 206 held by an agency before, on, or after the effective date of the
 207 exemption.

208 5. This paragraph is subject to the Open Government Sunset
 209 Review Act in accordance with s. 119.15, and shall stand
 210 repealed on October 2, 2017, unless reviewed and saved from
 211 repeal through reenactment by the Legislature.

212 Section 2. The Legislature finds that it is a public
 213 necessity that the names of the spouses and children of active
 214 or former sworn or civilian law enforcement personnel be exempt
 215 from s. 119.07(1) and s. 24(a), Art. I of the State
 216 Constitution. Sworn and civilian law enforcement personnel in
 217 this state perform a variety of important duties that ensure
 218 public safety and welfare and encourage safe and civil
 219 communities. Correctional and correctional probation officers
 220 work with felons, many of whom have committed violent crimes.
 221 Personnel of the Department of Children and Families whose
 222 duties include the investigation of abuse, neglect,
 223 exploitation, fraud, theft, or other criminal activities, and
 224 personnel of the Department of Health, work with individuals who
 225 may be a danger to their own children and families, as well as
 226 the children of others. Personnel of the Department of Revenue
 227 or local governments whose responsibilities include revenue
 228 collection and enforcement or child support enforcement
 229 investigate and bring enforcement actions against individuals
 230 who have failed to pay their lawful taxes or failed to pay to
 231 support their children. As a result of their duties, these sworn
 232 and civilian law enforcement personnel often come in close

11-00297C-13

2013376

233 contact with individuals who not only may be a threat to these
234 personnel, but who might seek to take revenge against them by
235 harming their spouses and children. Permitting access to the
236 names of spouses and children of active or former sworn or
237 civilian law enforcement personnel provides a means by which
238 individuals who have been investigated, arrested, interrogated,
239 or incarcerated can identify and cause physical or emotional
240 harm to these spouses and children. The Legislature therefore
241 finds that the harm that may result from the release of the
242 names of spouses and children of such law enforcement personnel
243 outweighs any public benefit that may be derived from the
244 disclosure of the information.

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



366616

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/19/2013	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment

Delete line 51
and insert:
former sworn or civilian law enforcement personnel and the other
specified agency personnel identified in

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 712

INTRODUCER: Senator Latvala

SUBJECT: Fallen Law Enforcement Officers License Plates

DATE: April 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	Favorable
2.	Everette	Phelps	RC	Pre-meeting
3.			ATD	
4.			AP	
5.				
6.				

I. Summary:

SB 712 creates the Fallen Law Enforcement Officers specialty license plate. The bill:

- Sets a \$25 annual use fee for the plate;
- Allows the Department of Highway Safety and Motor Vehicles (department, DHSMV) to develop the license plate, including colors and design;
- Requires that the word “Florida” must appear at the top of the plate and the words “A Hero Remembered Never Dies” must appear at the bottom; and
- Establishes that the annual use fee be distributed to the Police and Kids Foundation, Inc.

This bill substantially amends, ss. 320.08056 and 320.08058 of the Florida Statutes.

II. Present Situation:

Specialty License Plates

Specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. Annual use fees ranging from \$15 to \$25, paid in addition to required license taxes and service fees, are distributed to an organization in support of a particular cause or charity signified in the plate’s design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization.

The sponsoring organization wishing to receive a specialty license plate is required to comply with the requirements of s. 320.08.53, F.S., which include:

- describing the proposed specialty license, and submit a sample plate that conforms to the specifications set by the department.
- paying the \$60,000 processing fee which defrays the department's cost for reviewing the application and developing the specialty license plate, if authorized.
- providing a marketing strategy outlining short-term and long-term marketing plans and a projected financial analysis outlining the anticipated and planned revenues from the sale of the requested specialty license plate.

The approved specialty license plate organization must presell a minimum of 1,000 vouchers within 24 months before the department can begin manufacturing the specialty license plate. If, at the end of the 24-month presale period, the minimum sales requirements have not been met, the department will de-authorize the specialty plate, discontinue development, and discontinue issuance of the presale voucher.

Currently, there is a moratorium on the issuance of new specialty license plates. Section 45, Ch. 2008-176, L.O.F., as amended by s. 21, Ch. 2010-223, L.O.F., provides that “[e]xcept for a specialty license plate proposal which has submitted a letter of intent to the Department of Highway Safety and Motor Vehicles prior to May 2, 2008, and which has submitted a valid survey, marketing strategy, and application fee as required by s. 320.08053, F. S., prior to October 1, 2008, or which was included in a bill filed during the 2008 Legislative Session, the Department of Highway Safety and Motor Vehicles may not issue any new specialty license plates pursuant to ss. 320.08056 and 320.08058, F.S., between July 1, 2008, and July 1, 2014.”

Fallen Law Enforcement Officers

On average, one law enforcement officer is killed in the line of duty somewhere in the United States every 56 hours. Since the first known line-of-duty death in 1791, more than 19,000 U.S. law enforcement officers have made the ultimate sacrifice.¹ The Memorial Fund serves as a nationwide clearinghouse of information and statistics on law enforcement line-of-duty deaths.

Police and Kids Foundation, Inc.

The Police and Kids Foundation, Inc.,² is a non-profit 501(C) 3 charity, set up with two objectives: helping children in need, and creating the yearly scholarship to at least one senior student at Pinellas Park High School Criminal Justice Academy.

The Police and Kids Foundation, Inc., generate funding to assist children in and around the Tampa Bay community. Local police officers provide assistance of food, infant supplies, clothing, and any other measures necessary to stabilize a situation and improve child's life.

III. Effect of Proposed Changes:

The bill authorizes the department to develop and issue the Fallen Law Enforcement Officers specialty license plate with an annual \$25 use fee. Additionally, the bill authorizes the department to approve the design and colors, place the word “Florida” at the top of the plate and the words “A Hero Remembered Never Dies” at the bottom of the plate. Drivers can purchase

¹ <http://www.nleomf.org/facts/> (last visited on 3/19/2013)

² <http://www.policeandkids.com/about/> (last visited on 3/19/2013)

the specialty plate upon payment of the appropriate license taxes and fees and the \$25 annual use fee.

The bill also authorizes the department to distribute the use fees from the sale of the license plate. The \$25 use fee will be distributed to the Police and Kids Foundation, Inc.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who purchase the Fallen Law Enforcement Officers specialty license plate will pay the \$25 annual use fee.

C. Government Sector Impact:

The department's Information Systems Administration Office will require approximately 88 hours, non-recurring, in order to develop, design, manufacture, distribute the specialty license plate, and implement the provisions of this bill.

According to the department, the sponsoring organization has not yet fulfilled all requirements of s. 320.08053, F.S., which includes a \$60,000 application fee which is used by the department to offset startup costs.

VI. Technical Deficiencies:

The bill does not provide a limitation on the percentage of the annual use fee that may be used for administration and marketing.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

By Senator Latvala

20-00448-13

2013712__

1 A bill to be entitled
2 An act relating to specialty license plates; amending
3 ss. 320.08056 and 320.08058, F.S.; creating a Fallen
4 Law Enforcement Officers license plate; establishing
5 an annual use fee for the plate; providing for the
6 distribution of use fees received from the sale of
7 such plates; providing an effective date.
8

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

10
11 Section 1. Paragraph (aaaa) is added to subsection (4) of
12 section 320.08056, Florida Statutes, to read:

13 320.08056 Specialty license plates.-

14 (4) The following license plate annual use fees shall be
15 collected for the appropriate specialty license plates:

16 (aaaa) Fallen Law Enforcement Officers license plate, \$25.

17 Section 2. Subsection (79) is added to section 320.08058,
18 Florida Statutes, to read:

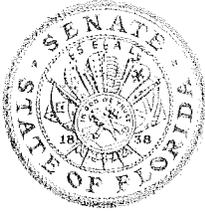
19 320.08058 Specialty license plates.-

20 (79) FALLEN LAW ENFORCEMENT OFFICERS LICENSE PLATES.-

21 (a) The department shall develop a Fallen Law Enforcement
22 Officers license plate as provided in this section. The plates
23 must bear the colors and design approved by the department. The
24 word "Florida" must appear at the top of the plate, and the
25 words "A Hero Remembered Never Dies" must appear at the bottom
26 of the plate.

27 (b) The license plate annual use fees shall be distributed
28 to the Police and Kids Foundation, Inc.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR JACK LATVALA

20th District

March 21, 2013

The Honorable John Thrasher, Chairman
Senate Rules Committee
404 S. Monroe St., 402S
Tallahassee, FL 32399-1100

RECEIVED
MAR 21 2013
SENATE
RULES COMMITTEE

Dear Chairman Thrasher:

I respectfully request that my bill, SB 712/Fallen Law Enforcement Officers License Plates, be placed on the agenda of the Senate Rules Committee at the earliest possible time. The bill was favorably considered by the Senate Transportation Committee on March 21.

This bill will create a specialty license plate to honor law enforcement officers that are killed in the line of duty. Proceeds from the annual fee of \$25 per tag will benefit the Police and Kids Foundation, Inc. which is a non-profit charity that assists children that are victims of crimes.

Please contact me if you have any questions regarding this request. I appreciate your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

JL:tc

CC: John Phelps, Staff Director

REPLY TO:
 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

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 Rules

BILL: CS/CS/SB 904

INTRODUCER: Rules Committee; Education Committee and Senator Brandes

SUBJECT: Education

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	Fav/CS
2.	Graf	Phelps	RC	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 904 creates the Florida Accredited Courses and Tests (FACTs) Initiative to expand student choice regarding courses and corresponding assessments which a student may take to satisfy various secondary and postsecondary education requirements.

The Florida-accredited courses and corresponding assessments must be approved by:

- The Commissioner of Education for application in K-12 public schools and the Florida College System institutions in accordance with the rules of the State Board of Education.
- The Chancellor of the State University System for application in state universities in accordance with the rules of the Board of Governors.

Approved Florida-accredited courses and corresponding assessments must be annually published in conjunction with the courses listed in the Statewide Course Numbering System and the Course Code Directory by the Articulation Coordinating Committee.

A Florida-accredited course or a corresponding assessment which is published in the Statewide Course Numbering System and the Course Code Directory may be applied as one whole unit course or as two or more discrete subunits which when combined are equivalent to the whole unit.

The bill authorizes school districts, Florida College System institutions, and state universities to execute contracts with qualified contractors for administering and proctoring the assessments associated with either the Florida-accredited courses or for the existing statewide, standardized assessments, as approved by the Florida Department of Education pursuant to State Board of Education rules. Additionally, the Florida Department of Education is authorized to execute contracts with qualified contractors on behalf of the state, a school district, a Florida College System institution, or a state university for administering and proctoring the assessments.

In addition, the bill promotes accountability for digital learning by:

- Requiring virtual instruction program providers to maintain a minimum level of services to students and parents.
- Providing for evaluation and funding methods for individuals or organizations offering online courses, including massive open online courses.

The effective date of the bill is July 1, 2013.

The bill amends sections 1002.45, 1007.01, 1007.24, and 1008.24 and creates section 1007.012 of the Florida Statutes and two undesignated sections of law.

II. Present Situation:

As online education has grown in popularity as an instructional delivery model, so has student interest in attaining education without constraints imposed by space, time, and location in both K-12 and postsecondary education sectors.

Breaking from the traditional model of offering courses, a number of universities are offering “massive open online courses” (MOOCs) to broaden access to higher education. For instance, Coursera¹ founded by two Stanford University professors² and edX³ founded by Harvard University and Massachusetts Institute of Technology, the two leading providers of MOOCs,

¹ 62 universities have partnered with Coursera. Coursera, *Universities*, <https://www.coursera.org/#universities> (last visited March 3, 2013). Coursera officially launched on April 18, 2012. The Stanford Daily, *Coursera launches humanities courses*, <http://www.stanforddaily.com/2012/04/18/coursera-launches-humanities-courses/> (last visited March 3, 2013).

² The New York Times, *Online Education Venture Lures Cash Infusion and Deals with 5 Top Universities* (Apr. 18, 2012), <http://www.nytimes.com/2012/04/18/technology/coursera-plans-to-announce-university-partners-for-online-classes.html> (last visited March 2, 2013).

³ “EdX currently offers HarvardX, MITx, and BerkeleyX classes online for free. Beginning Fall 2013, edX will offer WellesleyX and GeorgetownX classes online for free.” EdX, *Organization*, <https://www.edx.org/faq> (last visited March 3, 2013). Harvard University and the Massachusetts Institute of Technology announced the launch of edX on May 2, 2012. Harvard University, *MIT and Harvard Announce edX*, <http://news.harvard.edu/gazette/story/2012/05/mit-and-harvard-announce-edx/> (last visited March 3, 2013).

announced expansions that will approximately double the number of university partners offering free online classes.⁴ Colleges also have put forward faculty to teach the free courses.⁵ The American Council on Education, representing the presidents of U.S. accredited, degree-granting two- and four-year public and private universities, and nonprofit and not-for-profit entities⁶, endorsed for credit, five MOOCs that are offered through Coursera.⁷

In 2012, the University of Wisconsin (UW) System announced its innovative UW Flexible Option program.⁸ The UW System is expected to be the first public university system in the nation to offer the competency-based, self-paced learning option. However, unlike the other competency-based models, under the UW Flexible Option, UW faculty members modify existing college programs into self-paced, competency-based formats. Students will be able to use this format by passing a series of assessments that demonstrate mastery of required knowledge and skills that the students may have acquired through coursework, military training, on-the-job-training, and other learning experiences.⁹ Assessments are critical to the competency-based format because the assessments validate students' comprehension of the subject matter as the students make progress towards a degree.

The University of Florida (UF) partnered with Coursera in 2012 to offer UF's first free online course in human nutrition. Currently, approximately, 48,000 individuals are taking that human nutrition course.¹⁰ UF's interest in MOOCs coupled with Florida's statewide, nationally-recognized system of articulation could take the movement to a broader level of transferability and recognition.

Articulation ensures that students receive credit for comparable coursework without unnecessary repetition when transferring from one institution to another.¹¹ Unlike other states which rely on institutions to forge institutional-level partnerships for the transfer of quality instruction and

⁴ Education Week, *More Top Universities to Offer Free Online Courses* (Feb. 21, 2013), http://www.edweek.org/ew/articles/2013/02/20/595132usmassiveonlinecourses_ap.html (last visited March 2, 2013).

⁵ The Wall Street Journal, *Online-Education Provider Coursera Signs 29 More Schools* (Feb. 21, 2013), <http://online.wsj.com/article/SB10001424127887323864304578316530544924000.html> (last visited March 2, 2013).

⁶ American Council on Education, *About The American Council on Education*, <http://www.acenet.edu/about-ace/Pages/default.aspx> (last visited March 2, 2013).

⁷ The American Council on Education operates a credit-recommendation service that evaluates individual courses and advises its 1,800 member colleges regarding conferring credit on students who pass such courses. The Chronicle of Higher Education, *American Council on Education Recommends 5 MOOCs for Credit* (Feb. 7, 2013), <http://chronicle.com/article/American-Council-on-Education/137155/> (last visited March 2, 2013).

⁸ Under the UW Flexible Option, UW-Milwaukee will offer four degree programs and one certificate program starting in Fall 2013: two Nursing degrees (R.N.-to-B.S.N. and R.N.-to-M.N.) for Registered Nurses who need additional college education to qualify for higher professional credentials, a bachelor's degree-completion program in Diagnostic Imaging, targeted toward certified diagnostic imaging professionals, a B.S. in information Science & Technology, preparing students for jobs in tomorrow's digital culture and economy, and a certificate in Professional and Technical Communication, providing students with the essential written and oral communication skills needed in today's workplace. University of Wisconsin System, *UW System Unveils First Flexible Option Degree Programs* (Nov. 28, 2012), <http://www.wisconsin.edu/news/2012/r121128.htm> (last visited March 2, 2013).

⁹ University of Wisconsin System, *UW System Unveils First Flexible Option Degree Programs* (Nov. 28, 2012), <http://www.wisconsin.edu/news/2012/r121128.htm> (last visited March 2, 2013).

¹⁰ The Gainesville Sun, Editorial: *Risk and Reward*, <http://www.gainesville.com/article/20130220/OPINION01/130219521?template=printart> (last visited March 3, 2013).

¹¹ Florida Department of Education, *Postsecondary Articulation*, <http://www.fldoe.org/fcs/postsecart.asp> (last visited March 4, 2013).

credits, Florida, on a statewide level, guarantees transferability of credits¹² through a number of mechanisms including the statewide course numbering system and statewide articulation agreements. These mechanisms serve as the foundation of Florida's strong articulation system affording students the ability to take courses and assessments to earn credit across a variety of institutions by leveraging Florida's strong articulation system.

Course Offerings

The Florida Department of Education (DOE) maintains two course repositories: the Statewide Course Numbering System for courses that are offered at the postsecondary education level and the Course Code Directory for courses that are offered at the secondary education level.

Statewide Course Numbering System

Current law requires the DOE, in conjunction with the Board of Governors of the State University System of Florida (BOG), to develop, coordinate, and maintain a statewide course numbering system (SCNS) to improve program planning, increase communication among all delivery systems, facilitate student acceleration, and transfer of students and credits between public school districts, public postsecondary educational institutions, and participating nonpublic postsecondary institutions.¹³

Faculty committees representing school districts, public postsecondary educational institutions, and participating nonpublic postsecondary educational institutions assist in maintaining the SCNS. The faculty committees, appointed by the Commissioner of Education (commissioner) and the Chancellor of the State University System (SUS), recommend a single level for each course in the SCNS.¹⁴ The commissioner recommends the level for each course to the State Board of Education (SBE). The SBE, with input from the BOG, approves the level for each course.¹⁵

Any student who transfers among postsecondary institutions that are fully accredited by a regional or national accrediting agency recognized by the United States Department of Education and that participate in the SCNS must be awarded credit by the institution at which the student enrolls (receiving institution) for courses that the student completes satisfactorily at the previous institutions. Credit must be awarded for a course if the appropriate SCNS faculty committee responsible for reviewing the course determines that the course, for which a student is seeking credit, is equivalent to a course offered at the receiving institution.¹⁶

¹² Florida Department of Education, *Postsecondary Articulation*, <http://www.fldoe.org/fcs/postsecart.asp> (last visited March 4, 2013).

¹³ Section 1007.24(1), F.S. "Nonpublic colleges and schools that are fully accredited by a regional or national accrediting agency recognized by the United States Department of Education and are either eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant or have been issued a regular license by the [Commission for Independent Education], may participate in the statewide course numbering system." Participating colleges and schools must bear the costs associated with inclusion in the system and must meet the terms and conditions for participating in the SCNS. Section 1007.24(6), F.S.

¹⁴ Sections 1007.24(1), (2), and (7), F.S.

¹⁵ Section 1007.24(3), F.S.

¹⁶ Section 1007.24(7), F.S.

The DOE must ensure that credits that are accepted by a receiving institution be generated in courses for which the faculty members possess credentials recommended by the accrediting association of the receiving institution. A receiving institution may limit the award of credit to courses that are entered in the SCNS and the credit that is awarded must equally satisfy institutional requirements for both native students and transfer students.¹⁷

Course Code Directory

The Course Code Directory (CCD) is the listing of all public preK-12 courses available for use by school districts. Programs and courses which are funded through the Florida Education Finance Program (FEFP) and courses or programs for which students may earn credit toward high school graduation must be listed in the CCD. The CCD maintains course listings for administration and service assignments, K-12 education, exceptional student education, career and technical education, and adult education, with details regarding appropriate teacher certification levels. The CCD provides for course information to schools, districts, and the state.¹⁸

Assessments

Statewide Assessment Program for Public Schools

The purpose of the student assessment program is to provide information regarding the learning gains of all students. By assessing how well students have mastered the standards, parents and educators are able to determine whether the student needs remediation, is ready for the next grade level, or is equipped to pursue college or career study.¹⁹

Current law requires the commissioner to design and implement a statewide program of educational assessment to improve the operation and management of the public schools. The commissioner may enter into contracts for the continued administration of the assessment program authorized and funded by the Legislature. Contracts may be initiated in one fiscal year and continue into next the fiscal year. The commissioner may negotiate for the sale or lease of tests, scoring protocols, test scoring services, and related materials under law.²⁰

Credit by Examination

Credit by examination is a program through which secondary and postsecondary students generate postsecondary credits based on the receipt of a specified minimum score on nationally standardized general or subject-area examinations. For the purposes of statewide application, such examinations and the corresponding minimum scores required for an award of credit must be delineated by the SBE and the BOG in the statewide articulation agreement. Additionally, the Florida College System (FCS) institutions and state universities may also award credit by exam

¹⁷ Section 1007.24(7), F.S.

¹⁸ Rule 6A-1.09441, F.A.C.

¹⁹ Section 1008.22, F.S.

²⁰ Section 1008.22(3), F.S.

based on student performance on examinations developed within and recognized by the individual postsecondary institutions.²¹

Articulation

Current law encourages the university boards of trustees, the FCS institution boards of trustees, and the district school boards to establish intrainstitutional and interinstitutional programs to maximize articulation. Such programs may include upper-division-level courses offered at the FCS institution, distance learning, transfer agreements to facilitate transfer of credits between public and nonpublic postsecondary institutions, and the concurrent enrollment of students at a FCS institution and a state university to enable students to take any level of baccalaureate degree coursework.²²

The postsecondary education sectors must collaborate to develop and provide articulated programs that allow acceleration opportunities to students so that the students are able to achieve their educational objectives quickly.²³ In addition to shortening the time for a student to complete the requirements associated with a high school diploma or a postsecondary degree, acceleration opportunities are also intended to increase the depth of study available in different subject areas.²⁴

Acceleration

High school and postsecondary education acceleration opportunities must include, but not be limited to, dual enrollment, early admission, advanced placement (AP), the International Baccalaureate Program (IB), Advanced International Certificate of Education Program (AICE), and credit by examination or demonstration of competency.²⁵ The DOE must:²⁶

- Annually identify and publish the minimum scores, maximum credit, course or courses for which credit must be awarded for each College Level Examination Program (CLEP) subject examination, College Board AP examination, and IB examination, and AICE examination.
- Use student performance data in subsequent postsecondary courses to determine the appropriate examination scores and courses for which credit must be granted. Minimum scores may vary by subject area based on student performance data.
- Identify courses in the general education core curriculum of each state university and FCS institution.

²¹ Section 1007.27(6), F.S.

²² Section 1007.22(1), F.S.

²³ Section 1007.22(2), F.S.

²⁴ Section 1007.27(1), F.S.

²⁵ Sections 1007.22(2) and 1007.27(1), F.S.

²⁶ Section 1007.27(2), F.S.

Articulation Coordinating Committee

The Articulation Coordinating Committee (ACC) serves as an advisory board to the SBE and the BOG on postsecondary transition issues. The committee provides a unique K-20 forum for cross-sector collaboration that informs the policy decisions of the SBE and the BOG regarding the implementation of the statewide articulation agreement. The ACC reports to the commissioner and comprises of the following members: two members each representing the State University System (SUS), the FCS, public career and technical education, public K-12 education, and non-public education, and one member representing students.²⁷

The ACC is responsible for reviewing and monitoring the different components of Florida's articulation system and making policy recommendations to facilitate seamless articulation between and among public schools, career and technical education centers, FCS institutions, state universities, and nonpublic postsecondary institutions. For instance, the ACC annually reviews statewide articulation agreements as well as the SCNS, the levels of courses, and the application of transfer credit requirements among public and non-public institutions participating in the statewide course numbering system.²⁸

Statewide Articulation Agreement

The SBE and the BOG must enter into a statewide articulation agreement to preserve Florida's "2+2" system of articulation, facilitate the seamless articulation of student credit across and among Florida's educational entities, and reinforce articulation between secondary and postsecondary education; general education requirements and statewide course numbers; and the use of acceleration mechanisms, including nationally standardized examinations through which students may earn credit.²⁹

Virtual Instruction Programs

District virtual instruction programs were implemented by the 2008 Legislature to provide students with the opportunity to participate in virtual instruction programs.³⁰ Virtual instruction program means "a program of instruction provided in interactive learning environment created through technology in which students are separated from their teachers by time, space, or both."³¹ In order to provide the virtual instruction program, districts may contract with the Florida Virtual School, establish a franchise of the Florida Virtual School; contract with an approved provider; enter into an agreement with other school districts to allow participation of its students in an approved virtual instruction program provided by the other school district; establish its own part-time or full-time virtual instruction program; or enter into an agreement with a virtual charter school.³²

²⁷ Section 1007.01(2)-(3), F.S. The ACC was initially codified at 229.551, F.S., but was repealed January 7, 2003, by s. 3(7), ch. 2000-321. In 2011, the ACC was again codified in law by amending s. 1007.01, F.S. Section 7, ch. 2011-177, L.O.F.

²⁸ Section 1007.01(3), F.S.

²⁹ Section 1007.23(1), F.S.

³⁰ Section 4, ch. 2008-147, L.O.F.

³¹ Section 1002.45(1)(a)2., F.S.

³² Section 1002.45(1)(c), F.S.

Approved providers include those approved by the DOE, the Florida Virtual School, a franchise of the Florida Virtual School, or a FCS institution.³³ In order to be approved, providers must, among other requirements, locate an administrative office in Florida and require the providers' administrative staff to be Florida residents and all instructional staff to be Florida-certified teachers. Providers must also conduct background screenings for all employees or contracted personnel pursuant to current law using state and national criminal history records.³⁴

III. Effect of Proposed Changes:

Course Offerings

CS/CS/SB 904 creates the Florida Accredited Courses and Tests (FACTs) Initiative to expand student choice regarding courses that a student may take to meet the requirements for promotion, graduation, and degree attainment at the secondary or postsecondary education level.

Breaking from the traditional model of offering courses, under the FACTs Initiative, the bill introduces a new set of courses called "Florida-accredited courses" which students may take as a whole unit or as two or more discrete subunits which when combined, are equivalent to the whole unit.

The bill authorizes any individual, institution, entity, or organization to create or provide the Florida-accredited courses. Currently, education stakeholders (e.g., states, policymakers, parents, and students) rely primarily on the accreditation of an institution as an indication of the institution's ability to provide quality education. Historically and operationally, "accreditation" standards have been associated with institutions rather than courses. For instance, all public colleges and universities in Florida are accredited by the Southern Association of Colleges and Schools (SACS) Commission on Colleges which is the regional body for accreditation of degree-granting higher education institutions in the southern states.³⁵ The accreditation process involves a comprehensive review of institutional mission, governance and administration, programs, faculty, and resources to determine whether an institution is in compliance with accrediting standards.³⁶

In keeping with growing national trends regarding massive open online courses (MOOCs), the bill enables students to take courses that are offered by qualified individuals and entities for credit to meet the requirements for promotion, graduation, and degree attainment at the secondary or postsecondary education level, provided the student passes approved assessments that indicate competency in the course content. Additionally, the bill recognizes courses that are associated with rigorous industry certifications as eligible for consideration and approval as a

³³ Section 1002.45(1)(a)1., F.S.; *see also* Rule 6A-6.0981, F.A.C.

³⁴ Section 1002.45(2)(a)3., F.S.

³⁵ Southern Association of Colleges and Schools, *The Principles of Accreditation: Foundations for Quality Enhancement* (Revised 2011), at 1, available at <http://www.sacscoc.org/pdf/2012principlesofaccreditation.pdf>.

³⁶ At least 25 percent of credit hours required for the degree must be earned through instruction offered by the institution awarding the degree and at least 25 percent of the course hours in each major at the baccalaureate level must be taught by faculty members holding an appropriate terminal degree usually the earned doctorate or equivalent of the terminal degree. Southern Association of Colleges and Schools, *The Principles of Accreditation: Foundations for Quality Enhancement* (Revised 2011), available at <http://www.sacscoc.org/pdf/2012principlesofaccreditation.pdf>; *see also* Florida Board of Governors, *2013 Agency Legislative Bill Analysis for SB 904* (Feb. 27, 2013) at 2.

Florida-accredited course. As a result, the bill expands students' access to courses and industry certifications through open, online, and potentially free resources. The bill requires that the Florida-accredited courses be approved by the commissioner for application in K-12 public schools and Florida College System (FCS) institutions in accordance with the State Board of Education (SBE) rules and by the State University System (SUS) Chancellor for application in state universities in accordance with the Board of Governors of the State University System of Florida (BOG) rules. The FACTs Initiative also authorizes customization of programs to the unique interests of students.

Statewide Course Numbering System

The bill authorizes providers of online courses to participate in the statewide course numbering system (SCNS). Participation in the SCNS will allow the approved providers' courses to be listed in the SCNS database of postsecondary courses. As a result, students may be able to take such courses and earn postsecondary credit.

Assessments

The bill authorizes school districts, FCS institutions, and state universities to execute contracts with qualified contractors for administering and proctoring the assessments associated with either the Florida-accredited courses or for the existing statewide, standardized assessments that are required under law, as approved by the DOE pursuant to the SBE rules. Additionally, the bill authorizes the DOE to execute contracts with qualified contractors on behalf of the state, a school district, a FCS institution, or a state university³⁷. The bill requires that the assessments associated with the Florida-accredited courses be:

- Established by regionally accredited public institutions. The bill is open to institutions located in and out of Florida.
- Approved by the commissioner for application in K-12 public schools and FCS institutions in accordance with the SBE rules and by the SUS Chancellor for application in state universities in accordance with the BOG rules. As a result, students may be able to accelerate by demonstrating competency based on the approved assessments. To allow students to demonstrate subject area competency in segments, institutions may need to design assessments or contract with entities to design assessments and sub-assessments for various courses.
- Administered or proctored by qualified contractors at sites that meet specified requirements of the SBE rules³⁸. The bill conforms to current law regarding prohibiting individuals from knowingly and willfully violating test security rules in accordance with the SBE rules.³⁹

³⁷ SB 904 does not expressly provide to the Board of Governors authority to execute contract with qualified contractors on behalf of the state universities. Florida Board of Governors, *2013 Agency Legislative Bill Analysis for SB 904* (Feb. 27, 2013) at 5.

³⁸ Sections 120.536(1) and 120.54, F.S.

³⁹ Section 1008.24(1), F.S.

Articulation

The bill authorizes the application of Florida-accredited courses and corresponding assessments in whole, in subparts, or in a combination of whole and subparts toward requirements for promotion, graduation, or degree attainment. If a student completes a subunit of a Florida-accredited course satisfactorily as demonstrated by the student's performance on the corresponding assessment, the student must not be required to repeat that course subunit and the corresponding assessment.

Current law requires the Articulation Coordinating Committee (ACC) to establish passing scores and course and credit equivalents for advanced placement (AP), International Baccalaureate Program (IB), Advanced International Certificate of Education Program (AICE), and College-Level Examination Program (CLEP) exams.⁴⁰ The Florida Department of Education (DOE) maintains a Credit-by-Exam Equivalency List based on the annual recommendations by the ACC. The Credit-by-Exam Equivalency List also includes the Defense Activity of Non-Traditional Education Support (DANTES) Subject Standardized Tests (DSSTs) and Excelsior College exam equivalents which are adopted by the SBE rule.⁴¹ To implement the provisions of the bill, the Credit-by-Exam Equivalency List will need to be expanded to include passing scores and course and credit equivalents for the Florida-accredited courses and corresponding assessments.

Articulation Coordinating Committee

The bill requires the ACC to:

- Annually publish and share a consolidated list of approved Florida-accredited courses and associated approved assessments in the SCNS and Course Code Directory (CCD) course database to facilitate student and institutional knowledge of the Florida-accredited courses as options for earning credit.
- Recommend by December 31, 2013, a funding model and a financial accountability mechanism for funding and assessing individuals and organizations offering online courses, including MOOCs. This requirement expires July 1, 2014.

Virtual Instruction Programs

The bill revises virtual instruction program provider qualifications by removing a requirement regarding location of an administrative office in Florida and Florida residency of administrative staff. However, the bill requires virtual instruction program providers to maintain a minimum level of services to parents and students.

The specific information to be posted and accessible online must include, but not be limited to: contact information for course instructors, technical support, and administrative services. Providers must specify how the administrative office or an individual offering online courses,

⁴⁰ Section 1007.27(2), F.S.

⁴¹ Rule 6A-10.024, F.A.C.

including MOOCs, may be accessible via a phone, email, or other online messaging tools. The bill requires a minimum of one phone contact per month between instructors and students and the students' parents. These minimum levels of student support services may likely result in better student outcomes.

In addition, the bill expands requirements regarding instructional staff to include staff that are certified as adjunct educators under Florida law⁴². As a result, virtual instruction program providers must document that the providers' instructional staff are either Florida certified teachers or are certified as adjunct educators. Students will likely benefit from the expertise of individuals with considerable documented knowledge in specific subject areas but who do not possess Florida teacher certification.

The bill exempts individuals or organizations seeking to offer online courses from requirements regarding curriculum of full- and part-time programs, school policies and procedures, accreditation, annual financial audits, and school grades.

Evaluation and Funding Methods

The bill provides for evaluation and funding methods for individuals or organizations offering online courses, including massive open online courses. Specifically, the bill:

- Requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review and provide recommendations regarding student access to MOOCs for funding at the K-12 and postsecondary levels. The review must, at least, consider: identification of courses, provider qualification review, accreditation, teacher or instructor credentials, course content and standards, financial accountability, and a funding process. By December 31, 2013, OPPAGA must provide findings resulting from the review and recommendations to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.
- Requires the DOE to develop a methodology and plan for calculating the Florida Education Finance Program (FEFP) to limit the sum of each student's full-time equivalent (FTE) student membership value from all programs or courses to 1.0 FTE. The DOE's plan must include revised procedures for reporting and computing each district's annual allocation from the FEFP. In addition, the DOE must identify steps that the department and school districts must take to implement the new procedures during the 2014-2015 fiscal year. The DOE must conduct a student-based simulation of the revised methodology concurrent with the 2013-2014 FTE reporting and funding process. By January 31, 2014, the DOE must submit the department's plan and a summary of the results of the simulation to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

⁴² Section 1012.57, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Committee on Rules on April 9, 2013:

The committee substitute differs from CS/SB 904 in that the committee substitute:

- Revises virtual instruction program provider qualifications, requires virtual instruction program providers to maintain a minimum level of services to students and parents, and exempts individuals or organizations seeking to offer online courses from meeting certain statutory requirements.

- Provides for evaluation and funding methods for individuals or organizations offering online courses, including MOOCs.
- Authorizes providers of online courses to participate in the SCNS.

CS by Committee on Education on March 6, 2013:

The committee substitute differs from SB 904 in that the committee substitute:

- Changes the name of the Florida Flexible Option Initiative to Florida Accredited Courses and Tests (FACTs) Initiative.
- Changes the name of Florida-accredited charter courses to Florida-accredited courses.
- Authorizes any individual, institution, entity, or organization to create or provide the Florida-accredited courses.

B. Amendments:

None.



349806

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2013	.	
	.	
	.	
	.	

The Committee on Rules (Negron) recommended the following:

Senate Amendment (with title amendment)

Between lines 35 and 36
insert:

Section 1. Paragraph (a) of subsection (2) of section
1002.45, Florida Statutes, is amended to read:

1002.45 Virtual instruction programs.—

(2) PROVIDER QUALIFICATIONS.—

(a) The department shall annually publish online a list of
providers approved to offer virtual instruction programs. To be
approved by the department, a provider must document that it:

1. Is nonsectarian in its programs, admission policies,
employment practices, and operations;



349806

14 2. Complies with the antidiscrimination provisions of s.
15 1000.05;

16 ~~3. Locates an administrative office or offices in this~~
17 ~~state, requires its administrative staff to be state residents,~~
18 Requires all instructional staff to be Florida-certified
19 teachers under chapter 1012 or certified as adjunct educators
20 under s. 1012.57, and conducts background screenings for all
21 employees or contracted personnel, as required by s. 1012.32,
22 using state and national criminal history records;

23 4. Provides to parents and students specific information
24 posted and accessible online which includes, but is not limited
25 to, the following teacher-parent and teacher-student contact
26 information for each course:

27 a. How to contact the instructor via telephone, e-mail, or
28 online messaging tools.

29 b. How to contact technical support via telephone, e-mail,
30 or online messaging tools.

31 c. How to contact the administration office or an
32 individual offering online courses, including, but not limited
33 to, massive open online courses, via telephone, e-mail, or
34 online messaging tools.

35 d. Any requirement for regular contact with the instructor
36 for the course and clear expectations for meeting the
37 requirement.

38 e. A requirement that the instructor in each course, with
39 the exception of individuals offering online courses, including,
40 but not limited to, massive open online courses, must, at a
41 minimum, conduct one contact via telephone with the parent and
42 the student each month;



349806

43 ~~5.4.~~ Possesses prior, successful experience offering online
44 courses to elementary, middle, or high school students as
45 demonstrated by quantified student learning gains in each
46 subject area and grade level provided for consideration as an
47 instructional program option;

48 ~~6.5.~~ Is accredited by a regional accrediting association as
49 defined by State Board of Education rule;

50 ~~7.6.~~ Ensures instructional and curricular quality through a
51 detailed curriculum and student performance accountability plan
52 that addresses every subject and grade level it intends to
53 provide through contract with the school district, including:

54 a. Courses and programs that meet the standards of the
55 International Association for K-12 Online Learning and the
56 Southern Regional Education Board.

57 b. Instructional content and services that align with, and
58 measure student attainment of, student proficiency in the Next
59 Generation Sunshine State Standards.

60 c. Mechanisms that determine and ensure that a student has
61 satisfied requirements for grade level promotion and high school
62 graduation with a standard diploma, as appropriate;

63 ~~8.7.~~ Publishes for the general public, in accordance with
64 disclosure requirements adopted in rule by the State Board of
65 Education, as part of its application as a provider and in all
66 contracts negotiated pursuant to this section:

67 a. Information and data about the curriculum of each full-
68 time and part-time program.

69 b. School policies and procedures.

70 c. Certification status and physical location of all
71 administrative and instructional personnel.



- 72 d. Hours and times of availability of instructional
- 73 personnel.
- 74 e. Student-teacher ratios.
- 75 f. Student completion and promotion rates.
- 76 g. Student, educator, and school performance accountability
- 77 outcomes;

78 ~~9.8.~~ If the provider is a Florida College System
79 institution, employs instructors who meet the certification
80 requirements for instructional staff under chapter 1012; and

81 ~~10.9.~~ Performs an annual financial audit of its accounts
82 and records conducted by an independent certified public
83 accountant which is in accordance with rules adopted by the
84 Auditor General, is conducted in compliance with generally
85 accepted auditing standards, and includes a report on financial
86 statements presented in accordance with generally accepted
87 accounting principles.

88
89 A person or organization that seeks to offer online courses
90 pursuant to this paragraph is not subject to sub-subparagraphs
91 8.a. and b., subparagraphs 6., 9., and 10., and paragraphs
92 (8) (c) and (d).

93
94 ===== T I T L E A M E N D M E N T =====

95 And the title is amended as follows:

96 Delete line 2

97 and insert:

98 An act relating to education; amending s. 1002.45,

99 F.S.; allowing individuals or organizations that

100 provide individual online courses, including massive



101 open online courses, which are measured by statewide
102 assessments to apply for approval as state-level
103 providers; creating s. 1007.012,



601806

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2013	.	
	.	
	.	
	.	

The Committee on Rules (Negron) recommended the following:

Senate Amendment (with title amendment)

Between lines 187 and 188
insert:

Section 3. Paragraph (i) is added to subsection (3) of
section 1007.01, Florida Statutes, to read:

1007.01 Articulation; legislative intent; purpose; role of
the State Board of Education and the Board of Governors;
Articulation Coordinating Committee.-

(3) The Commissioner of Education, in consultation with the
Chancellor of the State University System, shall establish the
Articulation Coordinating Committee which shall make
recommendations related to statewide articulation policies to



601806

14 the Higher Education Coordination Council, the State Board of
15 Education, and the Board of Governors. The committee shall
16 consist of two members each representing the State University
17 System, the Florida College System, public career and technical
18 education, public K-12 education, and nonpublic education and
19 one member representing students. The chair shall be elected
20 from the membership. The committee shall:

21 (i) Recommend by December 31, 2013, a funding model and a
22 financial accountability mechanism for funding and assessing an
23 approved organization or an individual offering online courses,
24 including, but not limited to, massive open online courses. This
25 paragraph expires July 1, 2014.

26 Section 4. The Office of Program Policy Analysis and
27 Government Accountability (OPPAGA) shall review and provide
28 recommendations to allow student access to massive open online
29 courses for funding in both the K-12 and postsecondary programs.
30 The review must consider, but is not limited to, the
31 identification of courses, provider qualification review,
32 accreditation, teacher or instructor credentials, course content
33 and standards, financial accountability, and a funding process.
34 OPPAGA shall provide the findings and recommendations to the
35 Executive Office of the Governor, the President of the Senate,
36 and the Speaker of the House of Representatives by December 31,
37 2013.

38 Section 5. The Department of Education shall develop a
39 methodology and plan for calculating the Florida Education
40 Finance Program to limit the sum of each student's full-time
41 equivalent student membership value from all programs or courses
42 to 1.0 full time equivalent (FTE). The department's plan must



43 include revised procedures for reporting and computing each
44 district's annual allocation from the Florida Education Finance
45 Program and shall identify steps that the department and school
46 districts will take to implement the new procedures during the
47 2014-2015 fiscal year. The department shall conduct a student-
48 based simulation of the revised methodology concurrent with the
49 2013-2014 FTE reporting and funding process. The department
50 shall submit its plan and a summary of the results of the
51 simulation to the Executive Office of the Governor, the
52 President of the Senate, and the Speaker of the House of
53 Representatives by January 31, 2014.

54
55 ===== T I T L E A M E N D M E N T =====

56 And the title is amended as follows:

57 Delete line 32

58 and insert:

59 certain criteria; amending s. 1007.01, F.S.; requiring
60 the Articulation Coordinating Committee to recommend a
61 funding model and financial accountability mechanism
62 for providers of online courses; requiring the Office
63 of Program Policy Analysis and Government
64 Accountability to review and provide recommendations
65 to allow student access to massive open online courses
66 for funding purposes; providing review requirements;
67 requiring the office to provide findings and
68 recommendations to the Governor and the Legislature by
69 a specified date; requiring the Department of
70 Education to develop a methodology and plan for
71 calculating the Florida Education Finance Program



601806

72 which limits the sum of each student's full-time
73 equivalent student membership value from all virtual
74 programs or courses; providing requirements for the
75 plan; requiring the department to conduct a student-
76 based simulation of the revised methodology; requiring
77 the department to submit a report to the Governor and
78 the Legislature by a specified date; providing an
79 effective date.



758750

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2013	.	
	.	
	.	
	.	

The Committee on Rules (Negron) recommended the following:

Senate Amendment (with title amendment)

Between lines 114 and 115
insert:

Section 2. Subsection (6) of section 1007.24, Florida
Statutes, is amended to read:

1007.24 Statewide course numbering system.—

(6) Providers of online courses and nonpublic colleges and schools that are fully accredited by a regional or national accrediting agency recognized by the United States Department of Education and are either eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant or have been issued a regular license pursuant to s. 1005.31, may participate in the



758750

14 statewide course numbering system pursuant to this section.
15 Participating colleges and schools shall bear the costs
16 associated with inclusion in the system and ~~shall~~ meet the terms
17 and conditions for institutional participation in the system.
18 The department shall adopt a fee schedule that includes the
19 expenses incurred for ~~through~~ data processing, faculty task
20 force travel and per diem, and staff and clerical support time.
21 Such fee schedule may differentiate between the costs associated
22 with initial course inclusion in the system and costs associated
23 with subsequent course maintenance in the system. Decisions
24 regarding initial course inclusion and subsequent course
25 maintenance must be made within 360 days after submission of the
26 required materials and fees by the institution. The Department
27 of Education may select a date by which colleges must submit
28 requests for new courses to be included, and may delay review of
29 courses submitted after that date until the next year's cycle.
30 Any college that currently participates in the system, and that
31 participated in the system before ~~prior to~~ July 1, 1986, is
32 ~~shall~~ ~~be~~ required to pay the costs associated with initial
33 course inclusion in the system. Fees collected for participation
34 in the statewide course numbering system pursuant to the
35 provisions of this section shall be deposited into ~~in~~ the
36 Institutional Assessment Trust Fund. Any nonpublic, nonprofit
37 college or university that is eligible to participate in the
38 statewide course numbering system is ~~shall~~ ~~be~~ required to
39 pay the costs associated with participation in the system. No
40 college or school shall record student transcripts or document
41 courses offered by the college or school in accordance with this
42 subsection unless the college or school is actually



758750

43 participating in the system pursuant to rules of the State Board
44 of Education. Any college or school deemed to be in violation of
45 this section is ~~shall be~~ subject to the provisions of s.
46 1005.38.

47
48 ===== T I T L E A M E N D M E N T =====

49 And the title is amended as follows:

50 Delete line 21

51 and insert:

52 courses; amending s. 1007.24, F.S.; including
53 providers of online courses in the statewide course
54 numbering system; amending s. 1008.24, F.S.;

55 authorizing a

By the Committee on Education; and Senator Brandes

581-02011-13

2013904c1

1 A bill to be entitled
 2 An act relating to education; creating s. 1007.012,
 3 F.S.; creating the Florida Accredited Courses and
 4 Tests Initiative (FACTs); providing the purpose of the
 5 initiative; providing legislative intent; providing
 6 that implementing the initiative allows students to
 7 satisfy certain requirements; defining the term
 8 "Florida-accredited course" as it relates to the
 9 initiative; providing for application of certain
 10 courses and assessments toward promotion, graduation,
 11 and degree attainment; requiring that Florida-
 12 accredited courses and their assessments be annually
 13 identified, approved, published, and shared for
 14 consideration by certain students and entities;
 15 requiring the Commissioner of Education and the
 16 Chancellor of the State University System to approve
 17 each Florida-accredited course and its assessments;
 18 requiring the Articulation Coordinating Committee to
 19 annually publish and share a list of approved Florida-
 20 accredited courses, their assessments, and other
 21 courses; amending s. 1008.24, F.S.; authorizing a
 22 school district, a Florida College System institution,
 23 and a state university to contract with qualified
 24 contractors to administer and proctor statewide
 25 standardized assessments or assessments associated
 26 with Florida-accredited courses; authorizing the
 27 Department of Education to contract for these services
 28 on behalf of the state or a school district, Florida
 29 College System institution, or state university;

Page 1 of 7

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

581-02011-13

2013904c1

30 providing that assessments may be administered or
 31 proctored by qualified contractors at sites that meet
 32 certain criteria; providing an effective date.
 33
 34 Be It Enacted by the Legislature of the State of Florida:
 35
 36 Section 1. Section 1007.012, Florida Statutes, is created
 37 to read:
 38 1007.012 Florida Accredited Courses and Tests Initiative
 39 (FACTs).-
 40 (1) The Florida Accredited Courses and Tests Initiative
 41 (FACTs) is created to expand student choices in selecting
 42 multiple, high-quality public and nonpublic courses and
 43 assessments toward satisfying course, assessment, or credit
 44 requirements for promotion, graduation, or degree attainment.
 45 The purpose of the initiative is to make available multiple
 46 options to suit unique student interests, satisfy educational
 47 requirements, and accelerate student accomplishment of goals in
 48 a productive and effective manner.
 49 (2) The Legislature intends that state and local rules,
 50 policies, and administrative decisions are flexible in
 51 interpreting and implementing the requirements in this section
 52 in order to encourage creative, innovative, resourceful, and
 53 forward-thinking practices that can be modeled throughout this
 54 state and the country. The Legislature intends that the Florida
 55 Accredited Courses and Tests Initiative generate sufficient
 56 options for students to combine multiple instructional
 57 experiences and build complete programs for attaining a standard
 58 high school diploma and a postsecondary education degree which

Page 2 of 7

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

581-02011-13 2013904c1

59 are tailored to the unique interests of each student.

60 (3) The initiative allows students in this state to satisfy
 61 public K-12 education promotion or high school graduation
 62 course, assessment, or credit requirements, or to satisfy
 63 requirements for public postsecondary credit or degree
 64 attainment by successfully meeting the assessment requirements
 65 of this subsection.

66 (a) As used in this section, the term "Florida-accredited
 67 course" is a K-12 course or postsecondary education credit
 68 course that:

69 1. Is created or provided by individuals, institutions,
 70 entities, or organizations; and

71 2. Has fulfilled requirements under subsection (4) for
 72 purposes of satisfying requirements for promotion, graduation,
 73 or obtaining a degree. A massive, open online course and a
 74 course associated with rigorous industry certifications are
 75 eligible for consideration and approval as a Florida-accredited
 76 course.

77 (b) Courses and assessments may be applied toward
 78 requirements for promotion, graduation, or degree attainment in
 79 whole, in subparts, or in a combination of whole and subparts.

80 1. A Florida-accredited course, a public K-12 course
 81 identified on the course code directory, or a postsecondary
 82 education course identified on the statewide course numbering
 83 system, may be applied as one whole unit or as two or more
 84 discrete subunits such that when combined, they are equivalent
 85 to the whole unit. A student may not be required to repeat
 86 subunits that are satisfactorily completed.

87 2. Assessments associated with a course must be established

581-02011-13 2013904c1

88 by regionally accredited public institutions and must be
 89 approved in accordance with subsection (4). The assessments may
 90 be applied as one whole assessment or as two or more discrete
 91 subassessments such that when combined, they are equivalent to
 92 the whole assessment. A student may not be required to repeat
 93 subassessments that are satisfactorily completed. Assessments
 94 and subassessments shall be administered pursuant to s. 1008.24.

95 (4) A Florida-accredited course and its associated
 96 assessments must be annually identified, approved, published,
 97 and shared for consideration by interested students,
 98 institutions, school districts, colleges, and universities.

99 (a) Each Florida-accredited course and its associated
 100 assessments must be:

101 1. Approved by the Commissioner of Education for
 102 application in K-12 public schools and Florida College System
 103 institutions in accordance with rules of the State Board of
 104 Education.

105 2. Approved by the Chancellor of the State University
 106 System for application in state universities in accordance with
 107 rules of the Board of Governors.

108 (b) The Articulation Coordinating Committee established in
 109 s. 1007.01 shall annually publish and share a consolidated list
 110 of approved Florida-accredited courses and associated, approved
 111 assessments in conjunction with the courses listed in the course
 112 code directory and statewide course numbering system in a manner
 113 that facilitates student and institutional knowledge of the
 114 Florida-accredited courses as options available for credit.

115 Section 2. Section 1008.24, Florida Statutes, is amended to
 116 read:

581-02011-13

2013904c1

117 1008.24 Test administration and security.-

118 (1) ~~A person may not~~ ~~It is unlawful for anyone~~ knowingly
119 and willfully ~~to~~ violate test security rules adopted by the
120 State Board of Education for mandatory tests administered by or
121 through the State Board of Education or the Commissioner of
122 Education to students, educators, or applicants for
123 certification or administered by school districts pursuant to s.
124 1008.22, or, with respect to any such test, knowingly and
125 willfully to:

126 (a) Give examinees access to test questions prior to
127 testing;

128 (b) Copy, reproduce, or use in any manner inconsistent with
129 test security rules all or any portion of any secure test
130 booklet;

131 (c) Coach examinees during testing or alter or interfere
132 with examinees' responses in any way;

133 (d) Make answer keys available to examinees;

134 (e) Fail to follow security rules for distribution and
135 return of secure test as directed, or fail to account for all
136 secure test materials before, during, and after testing;

137 (f) Fail to follow test administration directions specified
138 in the test administration manuals; or

139 (g) Participate in, direct, aid, counsel, assist in, or
140 encourage any of the acts prohibited in this section.

141 (2) ~~A~~ ~~Any~~ person who violates this section commits a
142 misdemeanor of the first degree, punishable as provided in s.
143 775.082 or s. 775.083.

144 (3) A school district, a Florida College System
145 institution, and a state university may contract with qualified

581-02011-13

2013904c1

146 contractors to administer and proctor statewide, standardized
147 assessments required under s. 1008.22 or assessments associated
148 with Florida-accredited courses under s. 1007.012, as approved
149 by the Department of Education in accordance with rules of the
150 State Board of Education. The Department of Education may also
151 contract for these services on behalf of the state or any school
152 district, Florida College System institution, or state
153 university. Assessments may be administered or proctored by
154 qualified contractors at sites that meet criteria established by
155 rules of the State Board of Education and adopted pursuant to
156 ss. 120.536(1) and 120.54 to implement the contracting
157 requirements of this subsection.

158 ~~(4)~~ ~~(3)~~ (a) A district school superintendent, a president of
159 a public postsecondary educational institution, or a president
160 of a nonpublic postsecondary educational institution shall
161 cooperate with the Commissioner of Education in any
162 investigation concerning the administration of a test
163 administered pursuant to state statute or rule.

164 (b) The identity of a school or postsecondary educational
165 institution, the personally identifiable information of any
166 personnel of any school district or postsecondary educational
167 institution, or any specific allegations of misconduct obtained
168 or reported pursuant to an investigation conducted by the
169 Department of Education of a testing impropriety are
170 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and
171 s. 24(a), Art. I of the State Constitution until the conclusion
172 of the investigation or until such time as the investigation
173 ceases to be active. For the purpose of this paragraph, an
174 investigation shall be deemed concluded upon a finding that no

581-02011-13

2013904c1

175 impropriety has occurred, upon the conclusion of any resulting
176 preliminary investigation pursuant to s. 1012.796, upon the
177 completion of any resulting investigation by a law enforcement
178 agency, or upon the referral of the matter to an employer who
179 has the authority to take disciplinary action against an
180 individual who is suspected of a testing impropriety. For the
181 purpose of this paragraph, an investigation shall be considered
182 active so long as it is ongoing and there is a reasonable, good
183 faith anticipation that an administrative finding will be made
184 in the foreseeable future. This paragraph is subject to the Open
185 Government Sunset Review Act in accordance with s. 119.15 and
186 shall stand repealed on October 2, 2014, unless reviewed and
187 saved from repeal through reenactment by the Legislature.

188 Section 3. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic Online Education

Bill Number 904
(if applicable)

Name Adam Giery (Gear-e)

Amendment Barcode _____
(if applicable)

Job Title Dir of Policy

Address 136 5th bronough
Street

Phone _____

Tallahassee FL 32311
City State Zip

E-mail _____

Speaking: For Against Information

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/2013

Meeting Date

Topic _____

Bill Number 909
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



The Florida Senate

Committee Agenda Request

RECEIVED

APR 02 2013

SENATE
RULES COMMITTEE

To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 1, 2013

I respectfully request that **Senate Bill #904**, relating to Education, be placed on the:

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



Senator Jeff Brandes
Florida Senate, District 22

Cc: John B. Phelps

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/CS/SB 1632

INTRODUCER: Rules Committee; Appropriations Committee; Transportation Committee; and Senator Latvala

SUBJECT: Transportation

DATE: April 9, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Fav/CS
2.	Carey	Hansen	AP	Fav/CS
3.	Price	Phelps	RC	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/CS/SB 1632 revises the definition of “public agency” for purposes of the Florida Interlocal Cooperation Act; revises provisions relating to the Florida Department of Transportation’s (FDOT) disposal and lease of real and personal property and revises a number of provisions relating to outdoor advertising.

The bill has an indeterminate fiscal impact on State Transportation Trust Fund. In addition, a positive impact to local revenue is expected as properties formerly owned by FDOT are returned to the ad valorem tax roll. See Section V.

Primarily, the bill:

- Includes a public transit provider as defined in s. 341.031, F.S., in the definition of “public agency” for purposes of the Florida Interlocal Cooperation Act of 1969.
- Authorizes the FDOT to contract for auction services used in the conveyance of real or personal property or of leasehold interests.

- Revises the terms and conditions under which the FDOT may sell or lease properties acquired for transportation rights-of-way.
- Provides that a public information system located on water management district property that is subject to the Highway Beautification Act of 1965 must be approved by the FDOT and the Federal Highway Administration, if such approval is required by federal law.
- Authorizes the FDOT, when it determines property is not needed for a transportation facility, to dispose of the property through negotiations, sealed competitive bids, auctions, or any other means the FDOT deems to be in its best interest and after due advertisement if the property is valued at greater than \$10,000.
- Prohibits a sale at a price less than the FDOT's current estimate of value, except under certain conditions.
- Authorizes the FDOT to enter into a lease through negotiations, sealed competitive bids, auctions, or any other means the FDOT deems to be in its best interest; and prohibits the FDOT from entering into a lease at a price less than the FDOT's current estimate of value.
- Requires the FDOT's estimate of value to be prepared in accordance with the FDOT procedures, guidelines, and rules for valuation of real property; and requires, if the value of the property exceeds \$50,000 as determined by the FDOT's estimate, the sale or lease must be at a negotiated price not less than the estimate of value as determined by an independent appraisal prepared in accordance with the FDOT procedures, guidelines, and rules, the cost of which must be paid by the party seeking the purchase or lease of the property.
- Relocates, revises, and repeals various definitions, and revises various duties of the FDOT with respect to administration and enforcement of state and federal outdoor advertising provisions.
- Provides that the FDOT shall permit signs only in commercial or industrial zones, as determined by the local government, as specified; provides criteria required for local government determinations as to zoning for a parcel; and provides certain uses and activities that may not be independently recognized as commercial or industrial, the bulk of which is relocated from existing law.
- Requires the FDOT to notify a sign applicant in writing if the FDOT disagrees with a local government determination that a proposed sign location is on a parcel that is in a commercial or industrial zone, authorizes an applicant whose application for a permit is denied to request an administrative hearing, and requires the FDOT to notify the local government that the applicant has requested a hearing.
- Provides that if the FDOT determines that the parcel does not meet sign permit requirements, the applicant must remove the sign within 30 days after the date of the order and is responsible for all sign removal costs; and provides for a reduction in transportation funding to a local government if a local government fails to comply.
- Revises various fees; revises provisions relating to signs visible from more than one highway; makes permanent a pilot program in specified locations under which the distance between certain permitted signs may be reduced to 1,000 feet; revises provisions relating to vegetation management and revises provisions relating to relocated or reconstruction of signs situated upon right-of-way acquired by the FDOT.
- Provides for additional signs that can be erected without a permit, but prohibits implementation or continuation of the authorized signs as specified; revises provisions relating to increasing the height of a sign at its permitted location if a noise-attenuation

barrier is permitted or erected by any governmental entity, as specified; and expands the logo sign program to the right-of-way of the limited-access system.

- Makes various grammatical changes to aid readability, provides various technical corrections, and conforms terminology to changes made in the act.
- Repeals a pilot program authorized in 2012 for signs for tourist-oriented commerce signs, which is replaced by authority to erect such signs without a permit under certain conditions.
- Requires the FDOT to submit for legislative approval in the next regular legislative session a program that allows participation in the maintenance of highway roadside rights-of-way through monetary contributions in exchange for the placement of organic corporate emblems in view of passing motorists in recognition of services provided, if the Federal Government approves such a program.
- Provides an effective date.

This bill substantially amends the following sections of the Florida Statutes: 337.25, 479.01, 479.02, 479.03, 479.04, 479.05, 479.07, 479.08, 479.10, 479.105, 479.106, 479.107, 479.111, 479.15, 479.1546, 479.16, 479.24, 479.25, 479.261, and 479.313.

This bill creates section 479.024, Florida Statutes.

The bill repeals section 76 of chapter 2012-174, Laws of Florida.

II. Present Situation:

Pinellas Suncoast Transit Authority (PSTA)

The Pinellas Suncoast Transit Authority, formerly known as Central Pinellas Transit Authority (CPTA), was created by the "Pinellas Suncoast Transit Authority Law"¹ by special act of the Legislature in 1970. Service began in 1973. In 1982 the Central Pinellas Transit Authority was renamed Pinellas Suncoast Transit Authority (PSTA) to more clearly describe the area served. In 1984 PSTA expanded the service area by merging with the St. Petersburg Municipal Transit System. PSTA serves most of the unincorporated area and 21 of the county's 24 municipalities, covering 98 percent of the county's population and 97 percent of its land area. The service area is defined in law.

Hillsborough Area Regional Transit Authority (HART)

The Hillsborough Transit Authority, operating and also known as Hillsborough Area Regional Transit Authority, or HART, was created as a body politic and corporate under Chapter 163, Part V, Sections 163.567, et seq., F.S., on October 3, 1979.^{2,3} HART was chartered for the

¹ Chapters 70-907, 82-368, 82-416, 90-449, 91-338, 94-433, 94-438, 99-440, 00-424, and 02-341, L.O.F.

² Sections 163.565 – 163.572, F.S., the Regional Transportation Authority Law, authorize the creation of regional transportation authorities by any two or more contiguous counties, cities or other political subdivisions. This law was created in the early 1970's to create the HART (Hillsborough Area Regional Transit) line transit agency in Hillsborough County and has not been used to create any other agency. The law provides for a charter committee to be formed consisting of representatives of the affected local governments (by population formula) to develop a charter defining the powers and duties of the transportation authority and submit the charter to the Department of State. Once the charter is filed the Governor must appoint two members to the board of directors of the transportation authority. The remaining membership of the board of directors is made up of representatives of the local governments. The authority is authorized to incur debt, levy taxes (up to 3

purpose of providing mass transit service to its two charter members, the City of Tampa and the unincorporated areas of Hillsborough County. The Authority may admit to membership any county or municipality contiguous to one of its members upon application and after approval by a majority vote of the Board of Directors. The City of Temple Terrace has been admitted as a member of the Authority.

House Bill 599 (2012)

In 2012, the Legislature passed HB 599⁴ providing legislative intent to encourage and facilitate a review by PSTA and HART in order to search for possible improvements in regional transit connectivity and implementation of operational efficiencies and service enhancements that are consistent with the regional approach to transit identified in the Tampa Bay Area Regional Transportation Authority's (TBARTA) Regional Transportation Master Plan.⁵ The Legislature found that improvements and efficiencies can best be achieved through a joint review, evaluation, and recommendations by PSTA and HART.

HB 599 required the governing bodies or a designated subcommittee of both PSTA and HART to hold joint meetings in order to consider and identify opportunities for greater efficiency and service improvements, including specific methods for increasing service connectivity between jurisdictions of each agency. The elements to be reviewed must also include:

- governance structure, including governing board membership, terms, responsibilities, officers, powers, duties, and responsibilities;
- funding options and implementation;
- facilities ownership and management;
- current financial obligations and resources; and
- actions to be taken that are consistent with TBARTA's master plan.

The bill required PSTA and HART jointly submit a report to the Speaker of the House of Representatives and the President of the Senate by February 1, 2013, on the elements described above. The report was required to include proposed legislation to implement each recommendation and specific recommendations concerning the reorganization of each agency, the organizational merger of both agencies, or the consolidation of functions within and between each agency. The report was submitted on or about January 28, 2013.

One of the scenarios presented in the report was the establishment of a joint powers agency.⁶ Attached to the report, required by HB 599, was a legal opinion from the General Counsels of PSTA and HART discussing legal issues arising out of the consolidation study. One conclusion

mills ad valorem tax, with county commission approval and by a majority of voters in the affected area), and has limited eminent domain powers.

³ This should not be confused with the statutory language in ch. 343, F.S., which creates other regional transportation authorities including TBARTA.

⁴ Ch 2012-174, L.O.F.

⁵ A copy of TBARTA's Master Plan is available at <http://www.tbarta.com/update> (last visited March 28, 2013).

⁶ PSTA/HART Consolidation Study (on file with the Senate Transportation Committee).

of the memorandum was transit authorities do not have the statutory authority to enter into joint power agreements.⁷

Florida Interlocal Cooperation Act

The Florida Interlocal Cooperation Act⁸ authorizes public agencies “of this state to exercise jointly with public agency of the state, of any other state or the United States government any power, privilege or authority which such agencies share in common and which might each exercise separately.”⁹ The joint exercise of power is to be made by contract in the form of an interlocal agreement. Pursuant to the statute, the agreements may address numerous terms and conditions including the agreement’s purpose and duration, personnel and financial issues, purchasing and contracting powers, accountability measures, and dispute resolution processes.¹⁰

“Public agency” is currently defined by law as a political subdivision, agency, or officer of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, a separate legal entity or administrative entity to administer or execute the agreement, an independently elected county officer, any agency of the United States Government, a federally recognized Native American tribe, and any similar entity of any other state of the United States.¹¹

Disposal and Lease of Real and Personal Property

The FDOT is authorized to purchase, lease, exchange, or otherwise acquire any land, property interests, buildings or other improvements necessary for rights-of-way for existing or anticipated transportation facilities on the State Highway System, on the State Park Road System, or in an FDOT designated rail or transportation corridor. The FDOT may also accept donations of land, building, or other improvements for transportation rights-of-way and may compensate an entity by providing replacement facilities when the land, building, or other improvements are needed for transportation purposes but are held by a federal, state, or local governmental entity and used for public purposes other than transportation.¹²

The FDOT is required to conduct a complete inventory of all real or personal property immediately upon acquisition, including an itemized listing of all appliances, fixtures, and other severable items, a statement of the location or site of each piece of realty, structure, or severable item; and the serial number assigned to each.¹³ The FDOT must evaluate the inventory of real property which has been owned for at least 10 years and which is not within a transportation corridor or the right-of-way of a transportation facility. If the property is not located within a transportation corridor or is not needed for a transportation facility, FDOT is authorized to

⁷ November 16, 2012, Report of General Counsels regarding Legal Issues Arising out of Consolidation Study (on file with the Senate Transportation Committee).

⁸ Section 163.01, F.S.

⁹ Section 163.01(4), F.S.

¹⁰ Section 163.01(5), F.S.

¹¹ Section 163.01(3)(b), F.S.

¹² Section 337.25(1), F.S.

¹³ Section 337.25(2), F.S.

dispose of the property.¹⁴ According to the FDOT, 85 percent of its currently-owned surplus property is valued at under \$50,000.

Sale of Property

The FDOT is authorized to sell any land, building, or other real or personal property it acquired if the FDOT determines the property is not needed for a transportation facility.¹⁵ The FDOT is required to first offer the property (“first right of refusal”) to the local government in whose jurisdiction the property is located, with the exception of the following parcels:

- The FDOT may negotiate the sale of property, at no less than fair market value as determined by an independent appraisal, to the owner holding title to abutting property, if in the FDOT’s discretion public sale would be inequitable.¹⁶
- The FDOT may sell property acquired for use as a borrow pit, at no less than fair market value, to the owner of abutting land from which the pit was originally acquired, if the pit is no longer needed.¹⁷
- The FDOT may convey to a county without consideration any property acquired by a county or by the FDOT using constitutional gas tax funds for a right-of-way or borrow pit for a road on the State Highway System, State Park Road System, or county road system if the property is no longer used or needed by the FDOT; and the county may sell the property on receipt of competitive bids.¹⁸
- A governmental entity may authorize re-conveyance to the original donor of property donated to the state for transportation purposes if the facility has not been constructed for at least five years, no plans have been prepared for construction of the facility, and the property is not located within a transportation corridor.¹⁹
- The FDOT may negotiate the sale of property as replacement housing if the property was originally acquired for persons displaced by transportation projects and if the state receives no less than its investment in such properties or fair market value, whichever is lower. This benefit extends only to persons actually displaced by a project, and dispositions to any other person must be for fair market value.²⁰

Once the FDOT determines the property is not needed for a transportation facility and has extended and received rejection of required first rights of refusal, FDOT is also authorized to:

- Negotiate the sale of property if its value is \$10,000 or less as determined by FDOT estimate;²¹
- Sell the property to the highest bidder through “due advertisement” of receipt of sealed competitive bids or by public auction if its value exceeds \$10,000 as determined by the FDOT estimate;²²

¹⁴ Section 337.25(3), F.S.

¹⁵ Section 337.25(4), F.S.

¹⁶ Section 337.25(4)(c), F.S.

¹⁷ Section 337.25(4)(d), F.S.

¹⁸ Section 337.25(4)(f), F.S.

¹⁹ Section 337.25(4)(g), F.S.

²⁰ Section 337.25(4)(i), F.S.

²¹ Section 337.25(4)(a), F.S.

- Determine the fair market value of property through appraisal conducted by an FDOT appraiser, if the FDOT begins the process for disposing of property on its own initiative, either by authorized negotiation or by authorized receipt of sealed competitive bids or public auction;²³
- Convey the property without consideration to a governmental entity if the property is to be used for a public purpose;²⁴ and
- Use the projected maintenance costs of the property over the next five years to offset the market value in establishing a value for disposal of the property, even if that value is zero, if the FDOT determines that the property will require significant costs to be incurred or that continued ownership of the property exposes the FDOT to significant liability risks.²⁵

Lease of Property

The FDOT is further authorized to convey a leasehold interest for commercial or other purposes to any acquired land, building, or other property, real or personal, subject to the following:²⁶

- The FDOT may negotiate such a lease at the prevailing market value with the owner from whom the property was acquired; with the holders of leasehold estates existing at the time of the FDOT's acquisition; or, if public bidding would be inequitable, with the owner of privately owned abutting property, after reasonable notice to all other abutting property owners.²⁷
- All other leases must be by competitive bid.²⁸
- Such leases are limited to five years in duration, but the FDOT may renegotiate a lease for an additional five-year term without rebidding.²⁹
- Each lease must require that any improvements made to the property during the lease term be removed at the lessee's expense.³⁰
- If property is to be used for a public purpose, including a fair, art show, or other educational, cultural, or fundraising activity, the property may be leased without consideration to a governmental entity or school board.³¹
- No lease may be used by the lessee to establish the four years' standing required by eminent domain law if the business had not been established for four years on the date title passed to the FDOT.³²
- The FDOT may enter into a long-term lease without compensation with certain public ports for rail corridors used for the operation of a short-line railroad to the port.³³

²² Section 337.25(4)(b), F.S.

²³ Section 337.25(4)(e), F.S.

²⁴ Section 337.25(4)(h), F.S.

²⁵ Section 337.25(4)(j), F.S.

²⁶ Section 337.25(5), F.S.

²⁷ Section 337.25(5)(a), F.S.

²⁸ Section 337.25(5)(b), F.S.

²⁹ Section 337.25(5)(c), F.S.

³⁰ Section 337.25(5)(d), F.S.

³¹ Section 337.25(5)(e), F.S.

³² Section 337.25(5)(g), F.S.

³³ Section 337.25(5)(h), F.S.

The appraisals currently required under s. 337.25(4)(c) and (d), F.S., must be prepared in accordance with the FDOT guidelines and rules by an independent appraiser certified by the FDOT.³⁴ When “due advertisement” is required, an advertisement in a newspaper of general circulation in the area of the improvements of not less than 14 calendar days prior to the date of the receipt of bids or the date on which a public auction is to be held satisfies the requirement.³⁵

Public Information Systems

Pursuant to s. 373.618, F.S., public information systems may be located on WMD property, provided certain terms and conditions are met. The systems must display messages to the general public concerning water management services, activities, events, watering restrictions, severe weather reports, amber alerts, and other essential public information. The law prohibits the use of WMDs funds to acquire, develop, construct, operate, or manage a public information system. Commercial messages are to be paid for by private sponsors.³⁶

Section 479.02, F.S., requires the FDOT to regulate the size, height, lighting, and spacing of signs on the interstate highway system in accordance with state and federal regulations. A permit and annual fee are required by any individual that proposes to erect, operate, use, or maintain any sign on the State Highway System outside an urban area or on any portion of the interstate or federal-aid primary highway system. Certain signs do not require a permit as long as the signs are in compliance with the provisions in s. 479.11(4)-(8), F.S.³⁷

Section 479.16, F.S., specifies that signs owned by a municipality or county that contain messages related to any commercial enterprise, a commercial sponsor of an event, personal messages, or political messages, are not considered information regarding government services. The FDOT may potentially be subject to an annual loss of 10 percent of federal highway funding if these signs are located within a “controlled area.”³⁸

Control of Outdoor Advertising

Since the passage of the Highway Beautification Act (HBA) in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along Federal-aid Primary, Interstate, and National Highway System roads. The HBA allows the location of billboards in commercial or industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

The primary features of the Highway Beautification Act include:

³⁴ Section 337.25(7), F.S.

³⁵ Section 337.25(8), F.S.

³⁶ See s. 373.918, F.S.

³⁷ See s. 479.11(4)-(8), F.S.

³⁸ “Controlled area” means 660 feet or less from the nearest edge of the right-of-way of any portion of the State Highway System, interstate, or federal-aid primary system and beyond 660 feet of the nearest edge of the right-of-way of any portion of the State Highway System, interstate, or federal-aid primary system outside an urban area. See s. 479.01, F.S.

- 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. Billboard controls apply to all Interstates, Federal-Aid Primaries, and other highways that are part of the national Highway System.
- States have the discretion to remove legal nonconforming signs³⁹ along highways. However, the payment of just compensation is required for the removal of any lawfully erected billboard along the specified roads.
- States and localities may enact stricter laws than stipulated in the HBA.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. While the 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.⁴⁰

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation (USDOT)⁴¹ incorporating the HBA's required controls, the FDOT requires commercial signs to meet certain requirements when they are within 660 feet of Interstate and Federal-Aid Primary highways in urban areas, or visible at any distance from the 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." 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.

Commercial and Industrial Areas

Outdoor advertising signs may legally be located in commercial or industrial areas. In conformance with the 1972 agreement, s. 479.01(4), F.S., currently defines "commercial or industrial zone" as a parcel of land designated for commercial or industrial use under both the Future Land Use Map (FLUM) of the local comprehensive plan and the land development regulations adopted pursuant to ch. 163, F.S. This allows the FDOT to consider both land development regulations and future land use maps in determining commercial and industrial land use areas and issuing permits for sign locations in such areas.

Unzoned Commercial and Industrial Areas

If a parcel is located in an area designated for multiple uses on the FLUM, and the land development regulations do not clearly designate the parcel for a specific use, the area will be considered an unzoned commercial or industrial area and outdoor advertising signs may be

³⁹ 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. (s. 479.01(17), F.S.)

⁴⁰ 23 U.S.C. § 131(b)

⁴¹ Copy on file in the Senate Transportation Committee.

permitted there provided three or more separate commercial or industrial activities take place.⁴² However, the following criteria must be met:

- One of the commercial or industrial activities must be located within 800 feet of the sign and on the same side of the highway,
- The commercial or industrial activity must be within 660 feet of the right-of-way, and
- The commercial or industrial activities must be within 1,600 feet of each other.

Regardless of whether the criteria above are met, the following activities are specifically excluded from being recognized as commercial or industrial activities and therefore cannot be considered when determining whether a parcel is an unzoned commercial or industrial area:

- Signs.
- Agricultural, forestry, ranching, grazing, farming, and related activities.
- Transient or temporary activities.
- Activities not visible from the main-traveled way.
- Activities conducted more than 660 feet from the right-of-way.
- Activities conducted in a building principally used as a residence.
- Railroad tracks and minor sidings.
- Communications towers.⁴³

With the exception of communication towers, the exclusion of these activities is specifically required by the 1972 agreement between the State and the United States Department of Transportation (USDOT).

Entry Upon Privately Owned Lands

For the purposes of ch. 479, F.S., all of the state is deemed as the territory under the FDOT's jurisdiction.⁴⁴ Employees, agents, or independent contractors working for the FDOT are authorized to enter upon any land upon which a sign is displayed, is proposed to be erected, or is being erected and to make sign inspections, surveys, and removals. After receiving consent by the landowner, operator, or person in charge, or appropriate inspection warrant issued by an appropriate judge, that the removal of an illegal outdoor advertising sign is necessary, the FDOT is authorized to enter upon any intervening privately-owned lands for the purpose of removal of illegal signs, provided the FDOT has determined that no other legal or economically feasible means of entry to the sign site are reasonably available. The FDOT is responsible for the repair or replacement in like manner of any physical damage or destruction of the private property.

⁴² Section 479.01(26), F.S.

⁴³ Id.

⁴⁴ Section 479.03, F.S.

License to Engage in the Business of Outdoor Advertising

A person is prohibited from engaging in the business of outdoor advertising without first obtaining a license from the FDOT. A person is not required to obtain the license to erect outdoor advertising signs or structures as an incidental part of a building construction contract.⁴⁵

Denial or Revocation of License

The FDOT may deny or revoke any license requested or granted under ch. 479, F.S., in any case in which the FDOT determines that the application for the license contains knowingly false or misleading information, or that the licensee has violated any of the provisions of that chapter, unless such licensee corrects such false or misleading information or complies with the provisions of that chapter within 30 days after the receipt of the FDOT notice. Any person aggrieved by any FDOT action in denying or revoking a license is authorized to apply to the FDOT for an administrative hearing within 30 days from the receipt of the notice.⁴⁶

Permit Application Documentation

Section 479.07(1), F.S., except as otherwise specified, provides that a person may not erect, operate, use, or maintain, or cause to be erected, operated, used, or maintained, any sign on the State Highway System outside an urban area, as defined in s. 334.03(31), F.S., or on any portion of the interstate or federal-aid primary highway system without first obtaining a permit for the sign from FDOT and paying the required annual fee. Subsection (2) prohibits a person from applying for a permit unless the person has first obtained the written permission of the owner or other person in lawful possession or control of the site designated as the location of the sign in the application for the permit. As a part of the application, the applicant or authorized representative must certify in a notarized signed statement that he or she has obtained the written permission of the owner or other person in lawful possession of the site designated as the location of the sign in the permit application.

Outdoor Advertising Annual Permit Fee/Multiple Transfer Fee/Permit Reinstatement Fee

The FDOT is required to establish by rule an annual permit fee for each sign facing⁴⁷ in an amount sufficient to offset the total cost to the FDOT for the program, but shall not exceed \$100.⁴⁸ The current fee is \$71, with some exceptions for small signs. The FDOT advises it has no immediate plans to increase the fee but notes the data base currently used for the program was written in 1999. While the system is in need of an upgrade, the upgrade is well down the list of priorities. However, when upgraded, the annual permit fee will need to be increased to offset the total cost to the FDOT for the program. No application fee to cover the FDOT's administrative costs in processing applications is currently required.

⁴⁵ Section 479.04, F.S.

⁴⁶ Section 479.05, F.S.

⁴⁷ A "sign facing" includes all sign faces and automatic changeable faces displayed at the same location and facing the same direction. A "sign face" means the part of the sign, including trim and background, which contains the message or informative contents. (s. 479.01(22) and (23), F.S.)

⁴⁸ Section 479.07(3)(c), F.S.

The transfer of valid permits from one sign owner to another is currently authorized upon written acknowledgement from the current permittee and submittal of a transfer fee of \$5 for each permit to be transferred.⁴⁹ The maximum transfer fee for any multiple transfer between two outdoor advertisers in a single transaction is \$100. The FDOT advises the \$100 fee is insufficient to cover its administrative costs in frequent cases of bulk transfers between two outdoor advertisers in a single transaction.

Current law provides a process for sign removal if a permittee has not submitted all license and permit renewal fees by the expiration date of the license or permit.⁵⁰ With respect to sign permits, if at any time before removal of the sign, the permittee demonstrates that a good faith error on the part of the permittee resulted in cancellation or nonrenewal of the permit, the FDOT is authorized to reinstate the permit if the permit reinstatement fee of up to \$300 based on the size of the sign is paid; all other permit renewal and delinquent permit fees due as of the reinstatement date are paid; and the permittee reimburses the FDOT for all actual costs resulting from the permit cancellation or nonrenewal. The FDOT advises its administrative costs associated with reviewing reinstatement requests are the same regardless of the size of the sign.

Permit Tag Placement/Replacement Tags

The FDOT is currently required to furnish to a permittee a serially numbered permanent metal permit tag which the permittee is required to securely attach to the sign facing or, if there is no facing, on the pole nearest the highway. Further, effective July 1, 2012, the tag must be securely attached to the upper 50 percent of the pole nearest the highway and must be attached in such a manner as to be plainly visible from the main traveled way. In addition, the permit becomes void unless the permit tag is properly and permanently displayed at the permitted site within 30 days after the date of permit issuance.⁵¹

That section also provides for the FDOT issuance of a replacement tag in the event a permit tag is lost, stolen, or destroyed and, alternatively, authorizes a permittee to provide its own replacement tag pursuant to the FDOT specifications that the FDOT shall adopt by rule at the time it establishes the service fee for replacement tags.⁵²

Signs Visible From More than One Highway

If a sign is visible from the controlled area of more than one highway subject to the FDOT jurisdiction, the sign must meet the permitting requirements of, and be permitted to, the highway having the more stringent permitting requirements.⁵³

Pilot Program/Reduction of Distance Between Permitted Signs

Current law establishes a pilot program in Orange, Hillsborough, and Osceola Counties, and within the boundaries of the City of Miami, under which the distance between permitted signs on

⁴⁹ Section 479.07(6), F.S.

⁵⁰ Section 479.07(8), F.S.

⁵¹ Section 479.07(5), F.S.

⁵² Rule 14-10.004(5), F.A.C.

⁵³ Section 479.07(9)(a), F.S.

the same side of an interstate highway may be reduced to 1,000 fee under the specified conditions and directs the FDOT to maintain statistics tracking the use of the provisions of the pilot program based on notifications received by the FDOT from local governments.⁵⁴

Sign Removal Following Permit Revocation

A sign permittee is currently required to remove a sign within 30 days after the date of revocation of the permit for the sign and, if the permittee fails to do so, the FDOT is required to remove the sign without further notice and without incurring any liability.⁵⁵ Further, all costs incurred by the FDOT in connection with the removal of a sign located within a controlled area adjacent to the State Highway System, interstate highway system, or federal-aid primary highway system following the revocation of the sign permit shall be assessed and collected from the permittee.⁵⁶

Notices of Violation/Signs Erected or Maintained Without Required Permit

Any sign located adjacent to the right-of-way of any highway on the State Highway System outside an incorporated area or adjacent to the right-of-way on any portion of the interstate or federal-aid primary highway system without the required the FDOT permit must be removed. Prior to removal, the FDOT is required to prominently post on the sign face a notice that the sign is illegal and must be removed within 30 days after the date on which the notice was posted. If the sign bears the name of the licensee or the name and address of the non-licensed sign owner, concurrently with and in addition to posting the notice, the FDOT must provide a written notice to the owner stating that the sign is illegal and must be permanently removed within the 30-day period; and that the sign owner has a right to request a hearing, which request must be filed with the FDOT within 30 days after the date of the written notice. If after notice the sign owner does not remove the sign, the FDOT is required to do so.⁵⁷

Issuance of Permits for Conforming or Nonconforming Signs

If a sign owner demonstrates to FDOT that:

- A given sign has been unpermitted, structurally unchanged, and continuously maintained at the same location for a period of seven years or more;
- The sign would have met the criteria established in ch. 479, F.S., for issuance of a permit at any time during the period in which the sign has been erected;
- The FDOT has not initiated a notice of violation or taken other action to remove the sign during the initial seven-year period; and
- The FDOT determines that the sign is not located on state right-of-way and is not a safety hazard.

The FDOT is authorized to consider the sign a conforming or nonconforming sign and to issue a permit for the sign upon application and payment of a penalty fee of \$300 and all pertinent fees

⁵⁴ Section 479.07(9)(c), F.S.

⁵⁵ Section 479.10, F.S.

⁵⁶ Section 479.313, F.S.

⁵⁷ Section 479.105(1)(a) and (b), F.S.

required by ch. 479, F.S., including annual permit renewal fees payable since the date of the erection of the sign.⁵⁸

Vegetation Management and View Zones for Outdoor Advertising

Section 479.106, F.S., addresses vegetation management and establishes “view zones” for lawfully permitted outdoor advertising signs on interstates, expressways, federal-aid primary highways, and the State Highway System, excluding privately or other publicly owned property. The intent of the section is to create partnering relationships which will have the effect of improving the appearance of Florida’s highways and creating a net increase in the vegetative habitat along the roads.⁵⁹

The section requires anyone desiring to remove, cut, or trim trees or vegetation on public right-of-way to improve the visibility of a sign or future sign to obtain written permission from the FDOT. To receive a permit to remove vegetation, the applicant must provide a plan for the removal and for the management of any vegetation planted as the result of a mitigation plan. Rule 14-10.057, F.A.C., requires mitigation where:

- Cutting, trimming, or damaging vegetation permanently detracts from the appearance or health of trees, shrubs, or herbaceous plants, or where such activity is not done in accordance with published standard practices. This does not apply to invasive exotic and other noxious plants;
- Trees taller than the surrounding shrubs and herbaceous plants are permanently damaged or destroyed;
- Species of trees or shrubs not likely to grow to interfere with visibility are damaged or removed;
- Trees or shrubs that are likely to interfere with visibility are trimmed improperly, permanently damaged, or removed; or
- Herbaceous plants are permanently damaged.

When the installation of a new sign requires the removal, cutting, or trimming of existing trees or vegetation on public right-of-way, the FDOT may only grant a permit for the new sign when the sign owner has removed at least two non-conforming signs of comparable size and surrendered those signs’ permits for cancellation. For signs originally permitted after July 1, 1996,⁶⁰ the FDOT is prohibited from granting any permit where such trees or vegetation are part of a beautification project implemented before the date of the original sign permit application, as specified.

Vegetation Management Application Fee/Multiple Site Fee/Administrative Penalty

The FDOT is currently authorized to establish an application fee not to exceed \$25 for each individual application to defer the costs of processing such application and a fee not to exceed \$200 to defer the costs of processing an application for multiple sites.⁶¹ Further, any person who

⁵⁸ Section 479.105(1)(e), F.S.

⁵⁹ Section 479.106(8), F.S.

⁶⁰ The date of enactment of s. 479.106, F.S.

⁶¹ Section 479.106(4), F.S.

violates or benefits from a violation of ch. 479, F.S., is subject to an administrative penalty of up to \$1,000 and is required to mitigate for the unauthorized removal, cutting, or trimming of trees or vegetation.⁶²

Cost of Sign Removal/Additional Fine for Violations

Section 479.107(5), F.S., requires that the cost of removing a specified sign, whether by the FDOT or an independent contractor, shall be assessed by the FDOT against the owner of the sign. In addition, the FDOT is directed to assess a fine of \$75 against the sign owner for any sign which violates the requirements of that section. The FDOT advises assessment is infrequent and collection is rare.

Relocation or Reconstruction of a Publicly Acquired Sign

When the FDOT acquires land with a lawful nonconforming sign, the sign may, at the election of its owner and the FDOT and subject to the FHWA approval, be relocated or reconstructed adjacent to the new right-of-way along the roadway within 100 feet of the current location, provided the nonconforming sign is not relocated on a parcel zoned residential, and provided further that such relocation is subject to applicable setback requirements.⁶³ The relocation is required to be adjacent to the current site, and the face of the sign may not be increased in size or height or structurally modified at the point of relocation in conflict with the building codes of the jurisdiction in which the sign is located.⁶⁴

Permits Not Required for Certain Signs

Section 479.16, F.S., currently identifies a number of signs for which permits are not required, including without limitation:

- On-premise signs (signs on property stating only the name of the owner, lessee, or occupant of the premises and not exceeding 8 square feet in area;
- Signs that are not in excess of 8 square feet that are owned by and relate to the facilities or activities of churches, civic organizations, fraternal organizations, charitable organizations, or units or agencies of government;
- Signs placed on benches, transit shelters, and waste receptacles; and
- Signs not in excess of 16 square feet placed at a road junction with the State Highway System denoting only the distance or direction of a residence or farm operation, or, in a rural area where a hardship is created because a small business is not visible from the road junction, one sign not in excess of 16 square feet, denoting only the name of, and the distance and direction to, the business. This provision 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.

⁶² Section 479.106(7), F.S.

⁶³ Section 479.15(3), F.S.

⁶⁴ Section 479.15(4), F.S.

Compensation for Removal of Signs

The FDOT is currently required to pay just compensation upon its removal of a lawful nonconforming sign along any portion of the interstate or federal-aid primary highway system.⁶⁵

Noise-Attenuation Barriers Blocking View of Signs

The owner of a lawfully erected sign is authorized to increase the height above ground level of such sign at its permitted location if any governmental entity permits or erects a noise-attenuation barrier in such a way as to block visibility of the sign. If construction of a proposed noise-attenuation barrier will screen a lawfully permitted sign, the FDOT is required to provide notice to the local government or jurisdiction in which the sign is located before erection of the noise attenuation barrier. If it is determined that the increase in height will violate a local ordinance or land development regulation, the local government or jurisdiction is required to notify the FDOT.

When notice has been received from the local government or jurisdiction prior to erection of the noise-attenuation barrier, the FDOT is required to conduct a written survey of all property owners identified as impacted by highway noise and who may benefit from the proposed barrier. The written survey must, in addition to stating the date, time, and location of a required public hearing, specifically advise the impacted property owners that:

- Erection of the noise-attenuation barrier may block the visibility of an existing outdoor advertising sign;
- The local government or local jurisdiction may restrict or prohibit increasing the height of the existing outdoor advertising sign to make it visible over the barrier; and
- If a majority of the impacted property owners vote for construction of the noise-attenuation barrier, the local government or local jurisdiction is required to:
 - Allow an increase in the height of the sign in violation of a local ordinance or land development regulation;
 - Allow the sign to be relocated or reconstructed at another location if the sign owner agrees; or
 - Pay the fair market value of the sign and its associated interest in the real property.

The FDOT must hold the public hearing and receive input on the proposed noise-attenuation barrier and its conflict with the local ordinance or land development regulations, and suggest or consider alternatives or modification to the proposed barrier to alleviate or minimize the conflict with the local ordinance or regulation or minimize any costs associated with relocating, reconstructing, or paying for the affected sign. Notice of the hearing, in addition to general provisions, must specifically state the same items specified for inclusion in the written survey above.

The FDOT is prohibited from permitting erection of the noise-attenuation barrier to the extent that the barrier screens or blocks visibility of the sign until after the public hearing and until such time as the survey has been conducted and a majority of the impacted property owners have

⁶⁵ Section 479.24, F.S.

indicated approval. When approved, the FDOT must notify the local governments or local jurisdictions, and the local government or jurisdiction must, notwithstanding any conflicting ordinance or regulation:

- Issue a permit by variance or otherwise for the reconstruction of a sign;
- Allow the relocation of a sign, or construction of another sign, at an alternative location that is permissible, if the sign owner agrees to relocate the sign or construct another sign; or
- Refuse to issue the required permits for reconstruction of a sign and pay fair market value of the sign and its associated interest in the real property to the sign owner.⁶⁶

Logo Program

The FDOT is required to establish a logo sign program for the rights-of-way of the interstate highway system to provide information to motorists about available gas, food, lodging, camping, attractions, and other services, as approved by the Federal Highway Administration, at interchanges through the use of business logos and may include additional interchanges under the program.⁶⁷ As indicated, the program is limited to the interstate highway system, but under the Manual on Uniform Traffic Control Devices,⁶⁸ the program may be extended to other limited-access facilities, thereby expanding opportunities for business participation in the program.

III. Effect of Proposed Changes:

Section 1 amends s. 163.01(3)(b), F.S., to include a public transit provider as defined in s. 341.031, F.S., in the definition of “public agency” for purposes of the Florida Interlocal Cooperation Act of 1969. This change will allow all public transit providers to enter into interlocal agreements.

Section 2 amends s. 337.25, F.S., relating to the FDOT acquisition, lease, and disposal of real and personal property, to:

- Authorize the FDOT to contract for auction services used in the conveyance of real or personal property or leasehold interests and to authorize such contracts to allow the contractor to retain a portion of the proceeds as compensation.
- Make “plain language” revisions to the provisions requiring an inventory upon the FDOT possession or acquisition of real or personal property to remove the required itemized listing in the inventory and replaces it with including a statement of the location or site of each piece of realty, structure, or severable item.
- Replace the FDOT authority to “sell” any land, building, or other real or personal property when the FDOT determines the property isn’t needed for a transportation facility with authority to “convey” the same; authorizes the FDOT, when it determines the property is not needed for a transportation facility, to dispose of property through negotiations, sealed competitive bids, auctions, or any other means the FDOT deems to be in its best interest.

⁶⁶ Section 479.25, F.S.

⁶⁷ Section 479.261, F.S.

⁶⁸ Adopted by FDOT pursuant to s. 316.0745, F.S.

- Requires due advertisement of properties valued at more than \$10,000.
- Prohibits a sale at a price less than the FDOT's current estimate of value.
- Authorize (rather than require) the FDOT to afford a right of first refusal to a political subdivision (in addition to a local government) in which the parcel is located, except in conveyances transacted under revised paragraphs (4)(a), (c), and (e).
- Revise the paragraphs of current subsection (4) as follows:
 - Removes the FDOT authority to negotiate the sale of property valued at \$10,000 or less as determined by the FDOT's estimate and relocates from paragraph (g) to paragraph (a) the authority of a governmental entity to authorize re-conveyance to the original donor of property donated to the state for transportation purposes under the specified conditions.
 - Relocates from paragraph (h) to paragraph (b) the FDOT's authority to convey property without consideration to a governmental entity if the property is to be used for a public purpose.
 - Removes the FDOT authority to negotiate the sale of property, at no less than fair market value, to the owner holding title to abutting property, if in the FDOT's discretion public sale would be inequitable and relocates revised authority from paragraph (c) to paragraph (e); relocates from paragraph (i) to paragraph (c) the FDOT's authority to negotiate the sale of property as replacement housing if the property was originally acquired for persons displaced by transportation projects and if the state receives no less than its investment in such properties or the FDOT's current estimate of value (rather than fair market value), whichever is lower; and also replaces fair market value dispositions to any other persons with dispositions for no less than the FDOT's current estimate of value.
 - Removes the FDOT authority to sell property acquired for use as a borrow pit, at no less than fair market value, to the owner of abutting land from which the pit was originally acquired, if the pit is no longer needed; and relocates from paragraph (j) to paragraph (d) the FDOT's authority to use the projected maintenance costs of the property over the next ten (rather than five) years to offset the market value in establishing a value for disposal of the property, even if that value is zero, if the FDOT determines that the property will require significant costs to be incurred or that continued ownership of the property exposes the FDOT to significant liability risks.
 - Relocates the FDOT authority to sell property to an abutting property owner currently in paragraph (c) to paragraph (e) and revises the authority to provide that if, in the FDOT's discretion, a sale to anyone other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for the FDOT's current estimate of value (rather than no less than fair market value as determined by an independent appraisal).
 - Deletes current paragraph (f) authorizing the FDOT to convey to a county without consideration any property acquired by a county or by the FDOT using constitutional gas tax funds for a right-of-way or borrow pit;
 - Deletes current paragraphs (g), (h), and (i), which language is relocated as already described.
- Prohibit the FDOT from conveying a leasehold interest at a price less than the FDOT's current estimate of value, except as provided in revised paragraphs (4)(a)-(d).
- Revise the paragraphs of current subsection (5) as follows:
 - Removes the FDOT authority to negotiate a lease at the prevailing market value with the owner from whom the property was acquired and with the holders of leasehold estates existing at the time of the FDOT's acquisition and relocates revised authority from paragraph (a) to paragraph (b).

- Removes the requirement that all other leases be by competitive bid; relocates the FDOT authority to sell property to an abutting property owner currently in paragraph (a) to paragraph (b); and revises the authority to provide that if, in the FDOT's discretion, a lease to a person other than an abutting property owner or tenant with a leasehold interest in the abutting property would be inequitable, the FDOT may lease the property to the abutting owner or tenant for no less than the FDOT's current estimate of value (rather than at the prevailing market value).
- Retains the five-year limitation on the duration of leases entered into through the general authority granted to the FDOT to enter into a lease through negotiations, sealed competitive bids, auctions, or any other means the FDOT deems to be in its best interest; removes that limitation from the revised the FDOT authority to lease property to an abutting owner or tenant if a lease to another would be inequitable; and authorizes the FDOT, in addition to its authority to renegotiate a lease, to extend a lease for an additional five years as the FDOT deems appropriate (rather than without rebidding).
- Revises the requirement that each lease contain a provision requiring any improvements made to the property during the term of lease to be removed at the lessee's expense by adding, "unless otherwise directed by the lessor."
- Deletes the identified public purposes (a fair, art show, or other educational, cultural, or fundraising activity) for which the FDOT may lease property without consideration; removes a school board as an entity to which the FDOT may grant such a lease; and provides that a lease for a public purpose is exempt from the five-year, renegotiation or extension limits.
- Remove direction that appraisals required by current paragraphs (4)(c) [sale of property to an abutting owner if public sale would be inequitable] and (4)(d) [sale of borrow pit to abutting owner from which originally required] be prepared in accordance with the FDOT guidelines and rules by an FDOT certified independent appraiser; remove direction that if federal funds were used in the acquisition of the property, the appraisal shall also be subject to the approval of the Federal Highway Administration; require the FDOT's estimate of value required by revised subsections (4) [conveyance of any land, building, or other real or personal property] and (5) [lease of any land, building, or other real or personal property] be prepared in accordance with the FDOT procedures, guidelines, and rules for valuation of real property; and require, if the value of the property exceeds \$50,000 as determined by the FDOT estimate, the sale or lease must be at a negotiated price not less than the estimate of value as determined by an appraisal prepared in accordance with the FDOT procedures, guidelines, and rules for valuation of property, the cost of which shall be paid by the party seeking the purchase or lease of the property.
- Provide that this section does not modify the eminent domain requirements of s. 73.013, F.S.

Section 3 amends s. 373.618, F.S., to require FDOT and Federal Highway Administration approval of a public information system that is located on water management district property and that is subject to the Highway Beautification Act, if such approval is required by federal law and regulation under the agreement between the state and the U.S. Department of Transportation and federal regulations.

Section 4 requires the FDOT to submit for legislative approval in the next regular legislative session a program that allows participation in the maintenance of highway roadside rights-of-way through monetary contributions in exchange for the placement of organic corporate

emblems in view of passing motorists in recognition of services provided, if the Federal Government approves such a program.

Section 5 amends s. 479.01, F.S., definitions as used in ch. 479, F.S., as follows:

- Revises the definition of “business of outdoor advertising,” to eliminate “constructing,” “erecting,” or “using,” outdoor advertising structures, signs, or advertisements from activities requiring a license.
- Repeals the definition of “commercial or industrial zone,” and relocates provisions to a new s. 479.024, F.S., under which local governments are required to determine the location of commercial or industrial zones in accordance with ch. 163, F.S..
- Revises the definition of “federal-aid primary highway system,” to conform to federal terminology.
- Revises the definition of “remove,” to mean to disassemble all sign materials above ground level and transport them from the sign site. Revises the definition of “sign face,” to include an automatic changeable face.
- Revises the definition of “State Highway System,” by referencing the existing definition in s. 334.03, F.S..
- Repeals the definition of “unzoned commercial or industrial area,” and relocates the criteria for determination of such an area to a new s. 479.024, F.S. The bill also relocates and revises provisions related to specified activities that may not be recognized as commercial or industrial activities.

Section 6 amends s. 479.02, F.S., duties of the FDOT, as follows:

- In the duty to administer and enforce the provisions of ch. 479, F.S., the agreement between the FDOT and the USDOT, Title 23 USC, and federal regulations, inserts the year of the agreement, 1972, and expressly incorporates provisions of the referenced chapter, agreement, law and regulations pertaining to the maintenance, continuance, and removal of nonconforming signs.
- In the duty to regulate size, height, lighting, and spacing of permitted signs, revises language to distinguish between commercial and industrial *parcels* and unzoned commercial or industrial *areas*.
- Directs the FDOT to determine such parcels and areas in the manner provided in the new s. 479.024, F.S.
- In the duty to adopt rules necessary for proper administration of ch. 479, F.S., including rules that identify activities that may not be recognized as industrial or commercial activities, revises language to distinguish between commercial and industrial *parcels* and unzoned commercial or industrial *areas* and requires the rules to provide for determination of such parcels and areas in the manner provided in the new s. 479.024, F.S.
- In the duty to inventory and determine the location of all signs, makes “plain language” revisions and repeals the FDOT direction to adopt rules regarding what information is to be collected and preserved in the inventory.

Section 7 creates s. 479.024, entitled “*Commercial and industrial parcels*,” providing a framework for local government determinations as to zoning for a parcel, the bulk of which is taken from existing law. The bill:

- Requires that the FDOT permit signs only in commercial or industrial zones, as determined by the local government in compliance with ch. 163, F.S., unless otherwise provided in ch. 479, F.S.
- Defines “parcel” to mean the property where the sign is located or proposed to be located; and defines “utilities” to include all privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and stormwater not connected with the highway drainage, and other similar commodities.
- Requires the local government determination as to zoning for a parcel to meet the following criteria:
 - The parcel is comprehensively zoned and includes commercial or industrial uses as allowable uses.
 - The parcel can reasonably accommodate a commercial or industrial use under the future land use map of the comprehensive plan and land use development regulations, as follows:
 - Sufficient utilities are available to support commercial or industrial development; and
 - The size, configuration, and public access of the parcel are sufficient to accommodate a commercial or industrial use, given requirements in the comp plan and land development regulations for vehicular access, on-site circulation, building setbacks, buffering, parking, and other applicable standards, or the parcel consists of railroad tracks or minor sidings abutting commercial or industrial property that meets the criteria of this subsection;
 - The parcel is not being used exclusively for noncommercial or nonindustrial uses.
- Provides, if a local government has not designated zoning through land development regulations in compliance with ch. 163 but has designated the parcel under the future land use map of the comp plan for uses that include commercial or industrial uses, the parcel shall be considered an unzoned commercial or industrial area; provides that for a permit to be issued for a sign in an unzoned commercial or industrial area, there must be three or more distinct commercial or industrial activities within 1,600 feet of each other, with at least one of the commercial or industrial activities located on the same side of the highway as the sign location, and within 800 feet of the sign location; and requires multiple commercial or industrial activities enclosed in one building when all uses have only shared building entrances to be considered one use.
- Modifies two of the existing uses and activities, and adds another, that may not be independently recognized as commercial or industrial, as follows:
 - Activities not visible from the main-traveled way, unless an FDOT facility is the only cause for the activity not being visible;
 - Railroad tracks and minor sidings, unless such use is immediately abutted by commercial or industrial property that meets specified criteria; and
 - Governmental uses, unless those uses would be industrial in nature if privately owned and operated. Such industrial uses must be the present and actual use, not merely be among the allowed uses.

- Requires the FDOT to notify a sign applicant in writing if the local government has indicated that a proposed sign location is on a parcel that is in a commercial or industrial zone and the FDOT finds it is not.
- Authorizes an applicant whose application is denied to request an administrative hearing for a determination of whether the parcel is located in a commercial or industrial zone and requires the FDOT to notify the local government that the applicant has requested a hearing, as specified.
- Provides that if the FDOT in a final order determines that the parcel does not meet the specified permitting conditions and a sign structure exists on the parcel the applicant shall remove the sign within 30 days after the date of the order and is responsible for all sign removal costs.
- Requires that if the FHWA reduces funds that would otherwise be apportioned to the FDOT due to a local government's failure to be compliant, the must FDOT reduce apportioned transportation funding to the local government by an equivalent amount.

Section 8 amends s. 479.03, F.S., to revise the FDOT's authority to enter upon privately owned lands to remove a sign by striking receipt of consent, inserting a specified written notice requirement, and expanding those to whom written notice must be alternatively given to include a person in charge of an intervening privately owned land.

Section 9 amends s. 479.04, F.S., relating to the required license to engage in the business of outdoor advertising, to provide that a person is not required to obtain a license solely to erect or construct outdoor advertising signs or structures, to conform to the revised definition of "business of outdoor advertising."

Section 10 amends s. 479.05, F.S., to authorize suspension of any license requested or granted under ch. 479, F.S., in addition to denial or revocation, in any case when the FDOT determines the application for the license contains false or misleading information of material consequence, that the licensee has failed to pay fees or costs owed to the FDOT for outdoor advertising purposes, or that the licensee has violated any of the provisions of s. 479, F.S., unless such licensee, within 30 days after receipt of the FDOT notice, corrects such false or misleading information, pays the outstanding amounts, or complies with the provisions of s. 479, F.S.

Section 11 amends s. 479.07, F.S., which prohibits any sign on the State Highway System outside an urban area or on any portion of the interstate or federal-aid primary highway system without first obtaining a permit, as follows:

- Streamlines processes by removing a requirement for a notarized affidavit in addition to certifying that all information contained in the application is true and correct and by removing an unnecessary certification of receipt of landowner written permission for the designated sign location.
- Removes a prohibition against prorating a fee for a period less than the remainder of the permit year to accommodate short-term publicity features.
- Provides for a non-refundable application fee of \$25 to accompany each permit application.
- Clarifies that the FDOT must act on a permit application within 30 days after receipt of the application by granting, denying, or returning the incomplete application.

- Revises requirements for placement of permit tags on sign structures; removes a provision rendering a permit void unless the permit tag is properly and permanently displayed as specified, removes permittee authorization to provide its own replacement tag; and removes the FDOT authority to adopt by rule specifications for the replacement tags.
- Increases the maximum transfer fee for any multiple transfers between two outdoor advertisers in a single transaction from \$100 to \$1,000.
- Revises the permit reinstatement fee from up to \$300 based on the size of the sign, to a static \$300.
- Makes “plain language” revisions to provisions relating to permitting signs visible to more than one highway subject to the FDOT jurisdiction and within the controlled area of the highways.
- Makes permanent a pilot program in specified locations under which the distance between permitted signs on the same side of an interstate highway may be reduced to 1,000 feet under specified and revised conditions and removes the FDOT’s duty to maintain statistics on the pilot program.
- Deletes obsolete language.

Section 12 amends s. 479.08, F.S., revising FDOT’s authority to deny or revoke any permit when it determines that the application contains false or misleading information of material consequence, eliminating that the information is knowingly false or misleading.

Section 13 amends s. 479.10, F.S., regarding sign removal, to require a permittee to remove a sign within 30 days after the date of cancellation (in addition to revocation) of the permit for the sign and specifies removal of the sign is at the permittee’s expense if FDOT remove the sign because the permittee fails to do so;

Section 14 amends s. 479.105, F.S., regarding signs erected or maintained without a required permit, to:

- Revise provisions for placement of an FDOT notice of violation on a sign;
- Require the FDOT to concurrently with and in addition to posting the notice, provide a written notice to the owner of the sign, the advertiser displayed on the sign, or the owner of the property;
- Remove the condition that notice be given concurrently to the owner only if the sign bears the name of the licensee or the name and address of the non-licensed sign owner;
- Provide that the written notice state that a hearing may be requested as specified;
- Include the advertiser displayed on the sign or the owner of the property along with the owner in the FDOT’s duty to remove the sign if not removed by the sign owner; and,
- Relocate and clarify existing provisions for the FDOT issuance of permits for conforming and nonconforming signs erected or maintained without the required permit.

Section 15 amends s. 479.106, F.S., relating to vegetation management and sign visibility, to:

- Require for signs originally permitted after July 1, 1996, the first application, or application for a change of view zone, for the removal, cutting, or trimming of trees or vegetation must

require, in addition to mitigation or contribution to a plan of mitigation, the removal of two nonconforming signs; and

- Provide that the administrative penalty for engaging in removal, cutting, or trimming in violation of this section or benefiting from such actions is up to \$1,000 per sign facing.

Section 16 amends s. 479.107(5), F.S., to repeal a \$75 fine against a sign owner who has been assessed the costs of removing a sign.

Section 17 amends s. 479.111(2), F.S., to insert in a reference to the agreement between the state and the USDOT the year the agreement was entered into; i.e., 1972.

Section 18 amends s. 479.15, F.S., providing for harmony of state and local regulations, to:

- Strike the definition of “federal-aid primary highway system,” also defined in s. 479.01, F.S.;
- Provide, subject to the FHWA approval and whenever public acquisition of land which has a lawful permitted (rather than nonconforming) sign occurs, the sign may, at the election of its owner and the FDOT, be relocated or reconstructed adjacent to the new ROW and in close proximity to the current site (rather than along the roadway within 100 feet of the current location), provided the sign is not relocated in an area inconsistent with s. 479.024, F.S., (rather than on a parcel zoned residential) and provided further that such relocation shall be subject to requirements (rather than applicable setback requirements) in the 1972 agreement between the state and the USDOT;
- Provide the face of a nonconforming sign may not be increased in size or height or structurally modified at the point of relocation as specified; and
- Provide a neighboring sign that is already permitted and that is within the spacing requirements of s. 479.07(9)(a), F.S., is not caused to become nonconforming.

Section 19 amends s. 479.156, F.S., relating to wall murals, to replace references to the “Highway Beautification Act” with references to its statutory placement in federal law, 23 U.S.C. s. 131, and to correct cross-references.

Section 20 amends s. 479.16, F.S., relating to signs for which permits are not required, to:

- Provide that specified provisions allowing certain signs without a permit may not be implemented or continued if the federal government notifies FDOT that implementation or continuation will adversely affect the allocation of federal funds to the FDOT;
- Increase the allowable size of certain signs from eight square feet to sixteen square feet;
- Revise a list of items to conform to the title of a cross-referenced section of law;
- Remove a provision rendering the small business sign authorization inapplicable to charter counties and strikes relocated language;
- Authorize local tourist-oriented business signs within rural areas of critical economic concern under specified conditions;
- Authorize temporary harvest season signs under specified conditions; and
- Authorize “acknowledgement signs,” intended to inform the traveling public that a public school club, team, or event has been sponsored by a person, firm, or other entity, erected

upon publicly funded school premises and relating to a specific public school club, team, or event under specified conditions.

Section 21 amends s. 479.24, F.S., to require the FDOT to pay just compensation for acquisition (rather than *removal*) of a lawful *conforming or nonconforming* sign.

Section 22 amends s. 479.25, F.S., relating to erection of noise-attenuation barriers blocking the view of a sign, to:

- Make “plain language” and conforming changes;
- Require, upon a determination that an increase in height as allowed will violate a provision contained in an ordinance or land development regulation, *prior to construction*, the local government or jurisdiction shall provide a variance or waiver to allow an increase in the height of the sign; and,
- Strike an FDOT requirement to conduct a written survey of all property owners impacted by noise and who may benefit from the barrier.

Section 23 amends s. 479.261, F.S., to expand the logo sign program to the entire limited-access highway system, rather than just the interstate highway system, as is already authorized under the Manual on Uniform Traffic Control Devices, thereby increasing opportunities for business participation.

Section 24 amends s. 479.313, F.S., relating to sign removal, to include *cancellation*, along with revocation, in the direction that all costs incurred by the FDOT in connection with the removal of a sign be assessed against and collected from the permittee.

Section 25 repeals section 76 of chapter 2012-174, Laws of Florida, which was a pilot program for tourist-oriented commerce outdoor advertising signs in rural areas of critical economic concern, which is replaced by authority to erect such signs without a permit under certain conditions.

Section 26 provides the bill takes effect on July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

The Revenue Estimating Conference has not analyzed the fiscal impact of this bill.

B. Private Sector Impact:**Section 9**

The bill provides for a nonrefundable application fee of \$25 to accompany each outdoor advertising sign permit application. FDOT advises that a significant number of applications must be returned for failure to provide complete information and that some applications are returned numerous times, even after extensive assistance from the FDOT staff. The fee is intended to cover the FDOT's administrative costs for reviewing applications and to encourage applicants to provide more complete information without multiple submissions.

The maximum transfer fee for any multiple transfer between two outdoor advertisers in a single transaction is increased from \$100 to \$1,000. The FDOT notes the transfer fee of \$5 for each permit to be transferred is not changing; however, in many instances, the transfer requests are so numerous that the \$100 fee is not covering the FDOT's actual costs to transfer the permits.

As to the permit reinstatement fee, the bill strikes the words "up to" and "based on the size of the sign," leaving the fee at a static \$300. The FDOT currently charges \$300 for permit reinstatement; no private sector fiscal impact will occur.

Section 13

The bill clarifies that the administrative penalty for vegetation management violations is up to \$1,000 per sign facing. The FDOT advises it has always interpreted the statute in that fashion and has assessed fines accordingly and, therefore, no private sector impact is expected.

C. Government Sector Impact:**Section 1**

After entering into interlocal agreements, public transit providers may see a reduction in expenditures due to efficiencies or service improvements. However, any reduction would depend upon the specific interlocal agreement.

Section 2

The fiscal impact of the modified terms and conditions governing the FDOT's sale or lease of surplus property is indeterminate. However, according to the FDOT, a net positive impact to local revenue is expected as properties are returned to the ad valorem

tax roll. In addition, an indeterminate savings to the state is expected as a result of reduced appraisal expenses, especially in cases when such costs approach and even exceed the price received by the FDOT.

Section 3

The revisions requiring approval of water management district public information systems avoids a potential annual loss of 10 percent of federal highway construction funds.

Section 9

The FDOT expects to recoup its administrative expenses associated with: (a) processing applications for outdoor advertising sign permits as a result of the nonrefundable application fee, and (b) processing large requests for multiple transfers at the same fee of \$5 per transfer, but with the increased cap of \$1,000 for multiple transfers.

Section 13

The FDOT expects no impact from the clarification that the penalty of up to \$1,000 is per sign facing.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS/CS by Rules on April 9, 2013:

The committee substitute:

- Includes a public transit provider as defined in s. 341.031, F.S., in the definition of “public agency” for purposes of the Florida Interlocal Cooperation Act of 1969.
- Provides that a water management district public information system subject to the Highway Beautification Act of 1965 must be approved by FDOT and the Federal Highway Administration if such approval is required by federal law and regulation under the agreement between the state and the U.S. Department of Transportation and by federal regulations relating to outdoor advertising control enforced by FDOT.

CS/CS by Appropriations on April 3, 2013:

The committee substitute:

- Requires due advertisement by FDOT when conveying or selling property which is valued at more than \$10,000.
- Prohibits the lease of any property at less than the property's current estimate of value.
- Restores definition of "due advertisement" to current law.
- Restores the cap on annual permit fee for each sign facing to \$100 to current law.
- Restores vegetation management application fee to current law.
- Revises the list of non-permitted signs that are required to be removed, at the owner's expense, if the FDOT is notified by the Federal Government of an adverse effect on the allocation of federal funds to the department.
- Clarifies sports facilities meet permitting exceptions if the display is related to the facility's activities or the presence of the products or services exist at the facility.

CS by Transportation on March 14, 2013:

The committee substitute:

- Revises the terms and conditions under which the FDOT may sell or lease properties acquired for right-of-way but which are no longer needed for transportation purposes;
- Restores the definition of "new highway" contained in current law;
- Restores to current law language rendering inapplicable to certain municipal jurisdictions provisions regarding relocation of and compensation for signs on land acquired by the FDOT; and
- Repeals a pilot program authorized in 2012 for tourist-oriented commerce signs in rural areas of critical economic concern, which is replaced by authority to erect such signs without a permit under certain conditions.

B. Amendments:

None.



961630

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2013	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 119 and 120

insert:

Section 1. Paragraph (b) of subsection (3) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(3) As used in this section:

(b) "Public agency" means a political subdivision, agency, or officer of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or



961630

14 consolidated government, a separate legal entity or
15 administrative entity created under subsection (7), a public
16 transit provider as defined in s. 341.031, an independently
17 elected county officer, any agency of the United States
18 Government, a federally recognized Native American tribe, and
19 any similar entity of any other state of the United States.
20

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

22 And the title is amended as follows:

23 Delete line 2

24 and insert:

25 An act relating to transportation; amending s. 163.01,
26 F.S.; modifying the definition of the term "public
27 agency" to include a public transit provider; amending
28 s. 337.25,



934516

1

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2013	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

2

Senate Amendment (with title amendment)

3

Between lines 398 and 399

5

insert:

6

Section 3. Section 373.618, Florida Statutes, is amended to read:

8

373.618 Public service warnings, alerts, and announcements.—The Legislature believes it is in the public interest that all water management districts created pursuant to s. 373.069 own, acquire, develop, construct, operate, and manage public information systems. Public information systems may be located on property owned by the water management district, upon terms and conditions approved by the water management district,

14



15 and must display messages to the general public concerning water
16 management services, activities, events, and sponsors, as well
17 as other public service announcements, including watering
18 restrictions, severe weather reports, amber alerts, and other
19 essential information needed by the public. Local government
20 review or approval is not required for a public information
21 system owned or hereafter acquired, developed, or constructed by
22 the water management district on its own property. A public
23 information system is exempt from the requirements of chapter
24 479. However, a public information system that is subject to the
25 Highway Beautification Act of 1965 must be approved by the
26 Department of Transportation and the Federal Highway
27 Administration if such approval is required by federal law and
28 federal regulation under the agreement between the state and the
29 United States Department of Transportation and by federal
30 regulations enforced by the Department of Transportation under
31 s. 479.02(1). Water management district funds may not be used to
32 pay the cost to acquire, develop, construct, operate, or manage
33 a public information system. Any necessary funds for a public
34 information system shall be paid for and collected from private
35 sponsors who may display commercial messages.

36
37 ===== T I T L E A M E N D M E N T =====

38 And the title is amended as follows:
39 Delete line 28
40 and insert:
41 the Legislature for approval; amending s. 373.618,
42 F.S.; providing that certain public information
43 systems operated by water management districts must be



44 approved by the Department of Transportation and the
45 Federal Highway Administration if such approval is
46 required by certain laws and regulations; amending
47 provisions of



104756

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/10/2013	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1007 - 1227
and insert:

(c) Notwithstanding subparagraph (a)1., there is established a pilot program in Orange, Hillsborough, and Osceola Counties, and within the boundaries of the City of Miami, under which the distance between permitted signs on the same side of an interstate highway may be reduced to 1,000 feet if all other requirements of this chapter are met and if:

1. The local government has adopted a plan, program, resolution, ordinance, or other policy encouraging the voluntary removal of signs in a downtown, historic, redevelopment, infill,



104756

14 or other designated area which also provides for a new or
15 replacement sign to be erected on an interstate highway within
16 that jurisdiction if a sign in the designated area is removed;

17 2. The sign owner and the local government mutually agree
18 to the terms of the removal and replacement; and

19 3. The local government notifies the department of its
20 intention to allow such removal and replacement as agreed upon
21 pursuant to subparagraph 2.

22 ~~4. The new or replacement sign to be erected on an~~
23 ~~interstate highway within that jurisdiction is to be located on~~
24 ~~a parcel of land specifically designated for commercial or~~
25 ~~industrial use under both the future land use map of the~~
26 ~~comprehensive plan and the land use development regulations~~
27 ~~adopted pursuant to chapter 163, and such parcel shall not be~~
28 ~~subject to an evaluation in accordance with the criteria set~~
29 ~~forth in s. 479.01(26) to determine if the parcel can be~~
30 ~~considered an unzoned commercial or industrial area.~~

31
32 The department shall maintain statistics tracking the use of the
33 provisions of this pilot program based on the notifications
34 received by the department from local governments under this
35 paragraph.

36 (d) This subsection does not cause a sign that was
37 conforming on October 1, 1984, to become nonconforming.

38 (10) Commercial or industrial zoning that ~~which~~ is not
39 comprehensively enacted or that ~~which~~ is enacted primarily to
40 permit signs may ~~shall~~ not be recognized as commercial or
41 industrial zoning for purposes of this provision, and permits
42 may ~~shall~~ not be issued for signs in such areas. The department



104756

43 shall adopt rules that ~~within 180 days after this act takes~~
44 ~~effect which shall~~ provide criteria to determine whether such
45 zoning is comprehensively enacted or enacted primarily to permit
46 signs.

47 Section 10. Section 479.08, Florida Statutes, is amended to
48 read:

49 479.08 Denial or revocation of permit.—The department may
50 deny or revoke any permit requested or granted under this
51 chapter in any case in which it determines that the application
52 for the permit contains ~~knowingly~~ false or misleading
53 information of material consequence. The department may revoke
54 any permit granted under this chapter in any case in which the
55 permittee has violated any of the provisions of this chapter,
56 unless such permittee, within 30 days after the receipt of
57 notice by the department, complies with the provisions of this
58 chapter. For the purpose of this section, the notice of
59 violation issued by the department must describe in detail the
60 alleged violation. Any person aggrieved by any action of the
61 department in denying or revoking a permit under this chapter
62 may, within 30 days after receipt of the notice, apply to the
63 department for an administrative hearing pursuant to chapter
64 120. If a timely request for hearing has been filed and the
65 department issues a final order revoking a permit, such
66 revocation shall be effective 30 days after the date of
67 rendition. Except for department action pursuant to s.
68 479.107(1), the filing of a timely and proper notice of appeal
69 shall operate to stay the revocation until the department's
70 action is upheld.

71 Section 11. Section 479.10, Florida Statutes, is amended to



104756

72 read:

73 479.10 Sign removal following permit revocation or
74 cancellation.—A sign shall be removed by the permittee within 30
75 days after the date of revocation or cancellation of the permit
76 for the sign. If the permittee fails to remove the sign within
77 the 30-day period, the department shall remove the sign at the
78 permittee's expense with or without further notice and without
79 incurring any liability as a result of such removal.

80 Section 12. Section 479.105, Florida Statutes, is amended
81 to read:

82 479.105 Signs erected or maintained without required
83 permit; removal.—

84 (1) Any sign which is located adjacent to the right-of-way
85 of any highway on the State Highway System outside an
86 incorporated area or adjacent to the right-of-way on any portion
87 of the interstate or federal-aid primary highway system, which
88 sign was erected, operated, or maintained without the permit
89 required by s. 479.07(1) having been issued by the department,
90 is declared to be a public nuisance and a private nuisance and
91 shall be removed as provided in this section.

92 (a) Upon a determination by the department that a sign is
93 in violation of s. 479.07(1), the department shall prominently
94 post on the sign, or as close to the sign as possible for those
95 locations where the sign is not easily accessible, face a notice
96 stating that the sign is illegal and must be removed within 30
97 days after the date on which the notice was posted. ~~However, if~~
98 ~~the sign bears the name of the licensee or the name and address~~
99 ~~of the nonlicensed sign owner,~~ The department shall,
100 concurrently with and in addition to posting the notice on the



104756

101 sign, provide a written notice to the owner of the sign, the
102 advertiser displayed on the sign, or the owner of the property,
103 stating that the sign is illegal and must be permanently removed
104 within the 30-day period specified on the posted notice. The
105 written notice shall further state that a hearing may be
106 requested, the sign owner has a right to request a hearing,
107 which request must be filed with the department within 30 days
108 after receipt the date of the written notice. However, the
109 filing of a request for a hearing will not stay the removal of
110 the sign.

111 (b) If, pursuant to the notice provided, the sign is not
112 removed by the ~~sign~~ owner of the sign, the advertiser displayed
113 on the sign, or the owner of the property within the prescribed
114 period, the department shall immediately remove the sign without
115 further notice; and, for that purpose, the employees, agents, or
116 independent contractors of the department may enter upon private
117 property without incurring any liability for so entering.

118 (c) However, the department may issue a permit for a sign,
119 as a conforming or nonconforming sign, if the sign owner
120 demonstrates to the department one of the following:

121 1. If the sign meets the current requirements of this
122 chapter for a sign permit, the sign owner may submit the
123 required application package and receive a permit as a
124 conforming sign, upon payment of all applicable fees.

125 2. If the sign does not meet the current requirements of
126 this chapter for a sign permit, the sign owner may receive a
127 permit as a nonconforming sign if the department determines that
128 the sign is not located on state right-of-way and is not a
129 safety hazard and if the sign owner pays a penalty fee of \$300



104756

130 and all pertinent fees required by this chapter, including
131 annual permit renewal fees payable since the date of the
132 erection of the sign, and attaches to the permit application
133 package documentation that demonstrates that:

134 a. The sign has been unpermitted, structurally unchanged,
135 and continuously maintained at the same location for a period of
136 7 years or more;

137 b. During the entire period in which the sign has been
138 erected, a permit was required but was not obtained;

139 c. During the initial 7 years in which the sign has been
140 erected, the sign would have met the criteria established in
141 this chapter at that time for issuance of a permit; and

142 d. The department has not initiated a notice of violation
143 or taken other action to remove the sign during the initial 7-
144 year period.

145 (d) This subsection does not cause a neighboring sign that
146 is permitted and that is within the spacing requirements in s.
147 479.07(9) (a) to become nonconforming.

148 (e) ~~(e)~~ For purposes of this subsection, a notice to the
149 sign owner, when required, constitutes sufficient notice; and
150 notice is not required to be provided to the lessee, advertiser,
151 or the owner of the real property on which the sign is located.

152 (f) ~~(d)~~ If, after a hearing, it is determined that a sign
153 has been wrongfully or erroneously removed pursuant to this
154 subsection, the department, at the sign owner's discretion,
155 shall either pay just compensation to the owner of the sign or
156 reerect the sign in kind at the expense of the department.

157 ~~(e) However, if the sign owner demonstrates to the~~
158 ~~department that:~~



104756

159 ~~1. The sign has been unpermitted, structurally unchanged,~~
160 ~~and continuously maintained at the same location for a period of~~
161 ~~7 years or more;~~

162 ~~2. At any time during the period in which the sign has been~~
163 ~~erected, the sign would have met the criteria established in~~
164 ~~this chapter for issuance of a permit;~~

165 ~~3. The department has not initiated a notice of violation~~
166 ~~or taken other action to remove the sign during the initial 7-~~
167 ~~year period described in subparagraph 1.; and~~

168 ~~4. The department determines that the sign is not located~~
169 ~~on state right-of-way and is not a safety hazard,~~

170
171 ~~the sign may be considered a conforming or nonconforming sign~~
172 ~~and may be issued a permit by the department upon application in~~
173 ~~accordance with this chapter and payment of a penalty fee of~~
174 ~~\$300 and all pertinent fees required by this chapter, including~~
175 ~~annual permit renewal fees payable since the date of the~~
176 ~~erection of the sign.~~

177 (2) (a) If a sign is under construction and the department
178 determines that a permit has not been issued for the sign as
179 required under the provisions of this chapter, the department is
180 authorized to require that all work on the sign cease until the
181 sign owner shows that the sign does not violate the provisions
182 of this chapter. The order to cease work shall be prominently
183 posted on the sign structure, and no further notice is required
184 to be given. The failure of a sign owner or her or his agents to
185 immediately comply with the order shall subject the sign to
186 prompt removal by the department.

187 (b) For the purposes of this subsection only, a sign is



104756

188 under construction when it is in any phase of initial
189 construction prior to the attachment and display of the
190 advertising message in final position for viewing by the
191 traveling public. A sign that is undergoing routine maintenance
192 or change of the advertising message only is not considered to
193 be under construction for the purposes of this subsection.

194 (3) The cost of removing a sign, whether by the department
195 or an independent contractor, shall be assessed against the
196 owner of the sign by the department.

197 Section 13. Subsections (5) and (7) of section 479.106,
198 Florida Statutes, are amended to read:

199 479.106 Vegetation management.—

200 (5) The department may only grant a permit pursuant to s.
201 479.07 for a new sign which requires the removal, cutting, or
202 trimming of existing trees or vegetation on public right-of-way
203 for the sign face to be visible from the highway when the sign
204 owner has removed at least two nonconforming signs of
205 approximate comparable size and surrendered the permits for the
206 nonconforming signs to the department for cancellation. For
207 signs originally permitted after July 1, 1996, the first
208 application, or application for a change of view zone, no permit
209 for the removal, cutting, or trimming of trees or vegetation
210 shall require, in addition to mitigation or contribution to a
211 plan of mitigation, the removal of two nonconforming signs. No
212 permits for the removal, cutting, or trimming of trees may be
213 granted for signs permitted after July 1, 1996 ~~be granted~~ where
214 such trees or vegetation are part of a beautification project
215 implemented before ~~prior to~~ the date of the original sign permit
216 application, when the beautification project is specifically



217 identified in the department's construction plans, permitted
218 landscape projects, or agreements.

219 (7) Any person engaging in removal, cutting, or trimming of
220 trees ~~or vegetation~~ in violation of this section or benefiting
221 from such actions shall be subject to an administrative penalty
222 of ~~up to~~ \$1,000 for each tree removed, cut, or trimmed in
223 violation of this section and required to mitigate for the
224 unauthorized removal, cutting, or trimming in such manner and in
225 such amount as may be required under the rules of the
226 department. Any person engaging in removal, cutting, or trimming
227 of other vegetation in violation of this section or benefiting
228 from such actions shall be subject to a separate and additional
229 administrative penalty of \$1,000 per sign facing and required to
230 mitigate for the unauthorized removal, cutting, or trimming in
231 such manner and in such amount as may be required under the
232 rules of the department.

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

234 And the title is amended as follows:

235 Delete lines 60 - 75

236 and insert:

237 requirements for signs on certain highways; deleting
238 certain sign placement criteria used in a pilot
239 program relating to placement and revising a permit
240 reinstatement fee; amending s. 479.08, F.S.;

241 clarifying provisions relating to the denial or
242 revocation of a permit because of false or misleading
243 information in the permit application; amending s.
244 479.10, F.S.; providing for cancellation of a permit;
245 amending s. 479.105, F.S.; revising notice



104756

246 requirements to owners and advertisers relating to
247 signs erected or maintained without a permit; revising
248 procedures providing for the department to issue a
249 permit as a conforming or nonconforming sign to the
250 owner of an unpermitted sign; amending s. 479.106,
251 F.S.; increasing an administrative penalty for
252 illegally removing certain trees and providing a
253 separate administrative penalty for illegally removing
254 vegetation; amending s. 479.107,

By the Committees on Appropriations; and Transportation; and
Senator Latvala

576-03538-13

20131632c2

1 A bill to be entitled
2 An act relating to transportation; amending s. 337.25,
3 F.S.; authorizing the Department of Transportation to
4 use auction services in the conveyance of certain
5 property or leasehold interests; revising certain
6 inventory requirements; revising provisions and
7 providing criteria for the department to dispose of
8 certain excess property; providing such criteria for
9 the disposition of donated property, property used for
10 a public purpose, or property acquired to provide
11 replacement housing for certain displaced persons;
12 providing value offsets for property that requires
13 significant maintenance costs or exposes the
14 department to significant liability; providing
15 procedures for the sale of property to abutting
16 property owners; deleting provisions to conform to
17 changes made by the act; providing monetary
18 restrictions and criteria for the conveyance of
19 certain leasehold interests; providing exceptions to
20 restrictions for leases entered into for a public
21 purpose; providing criteria for the preparation of
22 estimates of value prepared by the department;
23 providing that the requirements of s. 73.013, F.S.,
24 relating to eminent domain, are not modified;
25 providing that certain programs approved by the
26 Federal Government relating to the maintenance of
27 highway roadside rights-of-way must be submitted to
28 the Legislature for approval; amending provisions of
29 ch. 479, F.S., relating to outdoor advertising signs;

Page 1 of 59

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

576-03538-13

20131632c2

30 amending s. 479.01, F.S.; revising and deleting
31 definitions; amending s. 479.02, F.S.; revising powers
32 of the department relating to nonconforming signs;
33 deleting a requirement that the department adopt
34 certain rules; creating s. 479.024, F.S.; limiting the
35 placement of signs in commercial or industrial zones;
36 defining the terms "parcel" and "utilities"; providing
37 mandatory criteria for local governments to use in
38 determining zoning for commercial or industrial
39 parcels; providing that certain parcels are considered
40 unzoned commercial or industrial areas; providing that
41 specified uses may not be independently recognized as
42 commercial or industrial areas; providing an appeal
43 process for an applicant whose permit is denied;
44 requiring an applicant whose application is denied to
45 remove an existing sign pertaining to the application;
46 requiring the department to reduce certain
47 transportation funding in certain circumstances;
48 amending s. 479.03, F.S.; providing for notice to
49 owners of intervening privately owned lands before
50 entering upon such lands to remove an illegal sign;
51 amending s. 479.04, F.S.; providing that an outdoor
52 advertising license is not required solely to erect
53 outdoor signs or structures; amending s. 479.05, F.S.;
54 authorizing the department to suspend a license for
55 certain offenses and specifying activities that the
56 licensee may engage in during the suspension; amending
57 s. 479.07, F.S.; revising requirements for obtaining
58 sign permits; conforming and clarifying provisions;

Page 2 of 59

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

576-03538-13

20131632c2

59 requiring an application fee; revising sign placement
 60 requirements for signs on certain highways; deleting
 61 provisions that establish a pilot program relating to
 62 placement and removing a permit reinstatement fee;
 63 amending s. 479.08, F.S.; clarifying provisions
 64 relating to the denial or revocation of a permit
 65 because of false or misleading information in the
 66 permit application; amending s. 479.10, F.S.;
 67 providing for cancellation of a permit; amending s.
 68 479.105, F.S.; revising notice requirements to owners
 69 and advertisers relating to signs erected or
 70 maintained without a permit; revising procedures
 71 providing for the department to issue a permit as a
 72 conforming or nonconforming sign to the owner of an
 73 unpermitted sign; amending s. 479.106, F.S.;
 74 increasing an administrative penalty for illegally
 75 removing certain vegetation; amending s. 479.107,
 76 F.S.; deleting fines for certain signs on highway
 77 rights-of-way; amending s. 479.111, F.S.; clarifying
 78 provisions relating to signs allowed on certain
 79 highways; amending s. 479.15, F.S.; deleting a
 80 definition; clarifying and conforming provisions
 81 related to permitted signs on property that is the
 82 subject of public acquisition; amending s. 479.156,
 83 F.S.; clarifying provisions related to the regulation
 84 of wall murals; amending s. 479.16, F.S.; providing
 85 that certain provisions relating to the regulation of
 86 signs may not be implemented or continued if such
 87 actions will adversely affect the allocation of

Page 3 of 59

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

576-03538-13

20131632c2

88 federal funds to the department; exempting from permit
 89 requirements certain signs placed by tourist-oriented
 90 businesses, certain farm signs during harvest season,
 91 acknowledgement signs on publicly funded school
 92 premises, and certain displays on specific sports
 93 facilities; providing for the removal of signs if
 94 certain exemptions do not apply because the allocation
 95 of federal funds to the department will be adversely
 96 impacted; amending s. 479.24, F.S.; clarifying
 97 provisions relating to compensation paid for the
 98 department's acquisition of lawful signs; amending s.
 99 479.25, F.S.; requiring a local government to grant a
 100 variance or waiver to a local ordinance or regulation
 101 to allow the owner of a lawfully permitted sign to
 102 increase the height of the sign if a noise-attenuation
 103 barrier is permitted by or erected by a governmental
 104 entity in a way that interferes with the visibility of
 105 the sign; deleting provisions to conform; amending s.
 106 479.261, F.S.; conforming provisions related to a logo
 107 sign program on limited access highways; amending s.
 108 479.313, F.S.; requiring a permittee to pay the cost
 109 of removing certain signs following the cancellation
 110 of the permit for the sign; repealing s. 76 of chapter
 111 2012-174, Laws of Florida, relating to authorizing the
 112 department to seek Federal Highway Administration
 113 approval of a tourist-oriented commerce sign pilot
 114 program and directing the department to submit the
 115 approved pilot program for legislative approval;
 116 providing an effective date.

Page 4 of 59

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

576-03538-13 20131632c2

117
118 Be It Enacted by the Legislature of the State of Florida:

119
120 Section 1. Section 337.25, Florida Statutes, is amended to
121 read:

122 337.25 Acquisition, lease, and disposal of real and
123 personal property.-

124 (1) (a) The department may purchase, lease, exchange, or
125 otherwise acquire any land, property interests, or buildings or
126 other improvements, including personal property within such
127 buildings or on such lands, necessary to secure or utilize
128 transportation rights-of-way for existing, proposed, or
129 anticipated transportation facilities on the State Highway
130 System, on the State Park Road System, in a rail corridor, or in
131 a transportation corridor designated by the department. Such
132 property shall be held in the name of the state.

133 (b) The department may accept donations of any land or
134 buildings or other improvements, including personal property
135 within such buildings or on such lands with or without such
136 conditions, reservations, or reverter provisions as are
137 acceptable to the department. Such donations may be used as
138 transportation rights-of-way or to secure or utilize
139 transportation rights-of-way for existing, proposed, or
140 anticipated transportation facilities on the State Highway
141 System, on the State Park Road System, or in a transportation
142 corridor designated by the department.

143 (c) When lands, buildings, or other improvements are needed
144 for transportation purposes, but are held by a federal, state,
145 or local governmental entity and utilized for public purposes

576-03538-13 20131632c2

146 other than transportation, the department may compensate the
147 entity for such properties by providing functionally equivalent
148 replacement facilities. The providing of replacement facilities
149 under this subsection may only be undertaken with the agreement
150 of the governmental entity affected.

151 (d) The department may contract pursuant to s. 287.055 for
152 auction services used in the conveyance of real or personal
153 property or the conveyance of leasehold interests under the
154 provisions of subsections (4) and (5). The contract may allow
155 for the contractor to retain a portion of the proceeds as
156 compensation for the contractor's services.

157 (2) A complete inventory shall be made of all real or
158 personal property immediately upon possession or acquisition.
159 Such inventory shall include a statement of the location or site
160 of each piece of realty, structure, or severable item ~~an~~
161 ~~itemized listing of all appliances, fixtures, and other~~
162 ~~severable items; a statement of the location or site of each~~
163 ~~piece of realty, structure, or severable item; and the serial~~
164 ~~number assigned to each.~~ Copies of each inventory shall be filed
165 in the district office in which the property is located. Such
166 inventory shall be carried forward to show the final disposition
167 of each item of property, both real and personal.

168 (3) The inventory of real property which was acquired by
169 the state after December 31, 1988, which has been owned by the
170 state for 10 or more years, and which is not within a
171 transportation corridor or within the right-of-way of a
172 transportation facility shall be evaluated to determine the
173 necessity for retaining the property. If the property is not
174 needed for the construction, operation, and maintenance of a

576-03538-13

20131632c2

175 transportation facility, or is not located within a
 176 transportation corridor, the department may dispose of the
 177 property pursuant to subsection (4).

178 (4) The department may convey ~~sell~~, in the name of the
 179 state, any land, building, or other property, real or personal,
 180 which was acquired under the provisions of subsection (1) and
 181 which the department has determined is not needed for the
 182 construction, operation, and maintenance of a transportation
 183 facility. ~~With the exception of any parcel governed by paragraph~~
 184 ~~(c), paragraph (d), paragraph (f), paragraph (g), or paragraph~~
 185 ~~(i), the department shall afford first right of refusal to the~~
 186 ~~local government in the jurisdiction of which the parcel is~~
 187 ~~situated.~~ When such a determination has been made, property may
 188 be disposed of through negotiations, sealed competitive bids,
 189 auctions, or any other means the department deems to be in its
 190 best interest, with due advertisement for property valued by the
 191 department at greater than \$10,000. A sale may not occur at a
 192 price less than the department's current estimate of value,
 193 except as provided in paragraphs (a)-(d). The department may
 194 afford a right of first refusal to the local government or other
 195 political subdivision in the jurisdiction in which the parcel is
 196 situated, except in conveyances transacted under paragraph (a),
 197 paragraph (c), or paragraph (e). in the following manner:

198 (a) If the ~~value of the~~ property has been donated to the
 199 state for transportation purposes and a facility has not been
 200 constructed for a period of at least 5 years, plans have not
 201 been prepared for the construction of such facility, and the
 202 property is not located in a transportation corridor, the
 203 governmental entity may authorize reconveyance of the donated

576-03538-13

20131632c2

204 property for no consideration to the original donor or the
 205 donor's heirs, successors, assigns, or representatives ~~to~~
 206 ~~\$10,000 or less as determined by department estimate, the~~
 207 ~~department may negotiate the sale.~~

208 (b) If ~~the value of~~ the property is to be used for a public
 209 purpose, the property may be conveyed without consideration to a
 210 governmental entity ~~exceeds \$10,000 as determined by department~~
 211 estimate, such property may be sold to the highest bidder
 212 through receipt of sealed competitive bids, after due
 213 advertisement, or by public auction held at the site of the
 214 improvement which is being sold.

215 (c) If the property was originally acquired specifically to
 216 provide replacement housing for persons displaced by
 217 transportation projects, the department may negotiate for the
 218 sale of such property as replacement housing. As compensation,
 219 the state shall receive no less than its investment in such
 220 property or the department's current estimate of value,
 221 whichever is lower. It is expressly intended that this benefit
 222 be extended only to persons actually displaced by the project.
 223 Dispositions to any other person must be for no less than the
 224 department's current estimate of value, in the discretion of the
 225 department, public sale would be inequitable, properties may be
 226 sold by negotiation to the owner holding title to the property
 227 abutting the property to be sold, provided such sale is at a
 228 negotiated price not less than fair market value as determined
 229 by an independent appraisal, the cost of which shall be paid by
 230 the owner of the abutting land. If negotiations do not result in
 231 the sale of the property to the owner of the abutting land and
 232 the property is sold to someone else, the cost of the

576-03538-13

20131632c2

233 ~~independent appraisal shall be borne by the purchaser, and the~~
 234 ~~owner of the abutting land shall have the cost of the appraisal~~
 235 ~~refunded to him or her. If, however, no purchase takes place,~~
 236 ~~the owner of the abutting land shall forfeit the sum paid by him~~
 237 ~~or her for the independent appraisal. If, due to action of the~~
 238 ~~department, the property is removed from eligibility for sale,~~
 239 ~~the cost of any appraisal prepared shall be refunded to the~~
 240 ~~owner of the abutting land.~~

241 (d) If the department determines that the property will
 242 require significant costs to be incurred or that continued
 243 ownership of the property exposes the department to significant
 244 liability risks, the department may use the projected
 245 maintenance costs over the next 10 years to offset the
 246 property's value in establishing a value for disposal of the
 247 property, even if that value is zero ~~property acquired for use~~
 248 ~~as a borrow pit is no longer needed, the department may sell~~
 249 ~~such property to the owner of the parcel of abutting land from~~
 250 ~~which the borrow pit was originally acquired, provided the sale~~
 251 ~~is at a negotiated price not less than fair market value as~~
 252 ~~determined by an independent appraisal, the cost of which shall~~
 253 ~~be paid by the owner of such abutting land.~~

254 (e) If, in the discretion of the department, a sale to
 255 anyone other than an abutting property owner would be
 256 inequitable, the property may be sold to the abutting owner for
 257 the department's current estimate of value. If the department
 258 begins the process for disposing of the property on its own
 259 initiative, either by negotiation under the provisions of
 260 paragraph (a), paragraph (c), or paragraph (d), ~~or~~ paragraph
 261 ~~(i), or by receipt of sealed competitive bids or public auction~~

576-03538-13

20131632c2

262 under the provisions of paragraph (b) ~~or paragraph (i)~~, a
 263 department staff appraiser may determine the fair market value
 264 of the property by an appraisal.

265 ~~(f) Any property which was acquired by a county or by the~~
 266 ~~department using constitutional gas tax funds for the purpose of~~
 267 ~~a right of way or borrow pit for a road on the State Highway~~
 268 ~~System, State Park Road System, or county road system and which~~
 269 ~~is no longer used or needed by the department may be conveyed~~
 270 ~~without consideration to that county. The county may then sell~~
 271 ~~such surplus property upon receipt of competitive bids in the~~
 272 ~~same manner prescribed in this section.~~

273 ~~(g) If a property has been donated to the state for~~
 274 ~~transportation purposes and the facility has not been~~
 275 ~~constructed for a period of at least 5 years and no plans have~~
 276 ~~been prepared for the construction of such facility and the~~
 277 ~~property is not located in a transportation corridor, the~~
 278 ~~governmental entity may authorize reconveyance of the donated~~
 279 ~~property for no consideration to the original donor or the~~
 280 ~~donor's heirs, successors, assigns, or representatives.~~

281 ~~(h) If property is to be used for a public purpose, the~~
 282 ~~property may be conveyed without consideration to a governmental~~
 283 ~~entity.~~

284 ~~(i) If property was originally acquired specifically to~~
 285 ~~provide replacement housing for persons displaced by~~
 286 ~~transportation projects, the department may negotiate for the~~
 287 ~~sale of such property as replacement housing. As compensation,~~
 288 ~~the state shall receive no less than its investment in such~~
 289 ~~properties or fair market value, whichever is lower. It is~~
 290 ~~expressly intended that this benefit be extended only to those~~

576-03538-13

20131632c2

291 ~~persons actually displaced by such project. Dispositions to any~~
 292 ~~other persons must be for fair market value.~~

293 ~~(j) If the department determines that the property will~~
 294 ~~require significant costs to be incurred or that continued~~
 295 ~~ownership of the property exposes the department to significant~~
 296 ~~liability risks, the department may use the projected~~
 297 ~~maintenance costs over the next 5 years to offset the market~~
 298 ~~value in establishing a value for disposal of the property, even~~
 299 ~~if that value is zero.~~

300 (5) The department may convey a leasehold interest for
 301 commercial or other purposes, in the name of the state, to any
 302 land, building, or other property, real or personal, which was
 303 acquired under the provisions of subsection (1). However, a
 304 lease may not be entered into at a price less than the
 305 department's current estimate of value.

306 (a) A lease may be through negotiations, sealed competitive
 307 bids, auctions, or any other means the department deems to be in
 308 its best interest ~~The department may negotiate such a lease at~~
 309 ~~the prevailing market value with the owner from whom the~~
 310 ~~property was acquired, with the holders of leasehold estates~~
 311 ~~existing at the time of the department's acquisition; or, if~~
 312 ~~public bidding would be inequitable, with the owner holding~~
 313 ~~title to privately owned abutting property, if reasonable notice~~
 314 ~~is provided to all other owners of abutting property.~~ The
 315 department may allow an outdoor advertising sign to remain on
 316 the property acquired, or be relocated on department property,
 317 and such sign shall not be considered a nonconforming sign
 318 pursuant to chapter 479.

319 (b) If, in the discretion of the department, a lease to a

Page 11 of 59

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

576-03538-13

20131632c2

320 person other than an abutting property owner or tenant with a
 321 leasehold interest in the abutting property would be
 322 inequitable, the property may be leased to the abutting owner or
 323 tenant for no less than the department's current estimate of
 324 value ~~All other leases shall be by competitive bid.~~

325 (c) No lease signed pursuant to paragraph (a) ~~or paragraph~~
 326 ~~(b)~~ shall be for a period of more than 5 years; however, the
 327 department may renegotiate or extend such a lease for an
 328 additional term of 5 years as the department deems appropriate
 329 without rebidding.

330 (d) Each lease shall provide that, unless otherwise
 331 directed by the lessor, any improvements made to the property
 332 during the term of the lease shall be removed at the lessee's
 333 expense.

334 (e) If property is to be used for a public purpose,
 335 ~~including a fair, art show, or other educational, cultural, or~~
 336 ~~fundraising activity,~~ the property may be leased without
 337 consideration to a governmental entity ~~or school board~~. A lease
 338 for a public purpose is exempt from the term limits in paragraph
 339 (c).

340 (f) Paragraphs (c) and (e) ~~(d)~~ do not apply to leases
 341 entered into pursuant to s. 260.0161(3), except as provided in
 342 such a lease.

343 (g) No lease executed under this subsection may be utilized
 344 by the lessee to establish the ~~4 years~~ standing required by s.
 345 73.071(3)(b) if the business had not been established for the
 346 specified number of 4 years on the date title passed to the
 347 department.

348 (h) The department may enter into a long-term lease without

Page 12 of 59

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

576-03538-13 20131632c2

349 compensation with a public port listed in s. 403.021(9)(b) for
 350 rail corridors used for the operation of a short-line railroad
 351 to the port.

352 (6) Nothing in this chapter prevents the joint use of
 353 right-of-way for alternative modes of transportation; provided
 354 that the joint use does not impair the integrity and safety of
 355 the transportation facility.

356 (7) The department's estimate of value, required by
 357 subsections (4) and (5), shall be prepared in accordance with
 358 department procedures, guidelines, and rules for valuation of
 359 real property. If the value of the property exceeds \$50,000, as
 360 determined by the department estimate, the sale or lease must be
 361 at a negotiated price not less than the estimate of value as
 362 determined by an appraisal prepared in accordance with
 363 department procedures, guidelines, and rules for valuation of
 364 real property, the cost of which shall be paid by the party
 365 seeking the purchase or lease of the property appraisal required
 366 by paragraphs (4)(c) and (d) shall be prepared in accordance
 367 with department guidelines and rules by an independent appraiser
 368 who has been certified by the department. If federal funds were
 369 used in the acquisition of the property, the appraisal shall
 370 also be subject to the approval of the Federal Highway
 371 Administration.

372 (8) A "due advertisement" under this section is an
 373 advertisement in a newspaper of general circulation in the area
 374 of the improvements of not less than 14 calendar days prior to
 375 the date of the receipt of bids or the date on which a public
 376 auction is to be held.

377 (9) The department, with the approval of the Chief

Page 13 of 59

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

576-03538-13 20131632c2

378 Financial Officer, is authorized to disburse state funds for
 379 real estate closings in a manner consistent with good business
 380 practices and in a manner minimizing costs and risks to the
 381 state.

382 (10) The department is authorized to purchase title
 383 insurance in those instances where it is determined that such
 384 insurance is necessary to protect the public's investment in
 385 property being acquired for transportation purposes. The
 386 department shall adopt procedures to be followed in making the
 387 determination to purchase title insurance for a particular
 388 parcel or group of parcels which, at a minimum, shall set forth
 389 criteria which the parcels must meet.

390 (11) This section does not modify the requirements of s.
 391 73.013.

392 Section 2. If the Federal Government approves a program
 393 that allows participation in the maintenance of highway roadside
 394 rights-of-way through monetary contributions in exchange for
 395 recognition of services provided in the form of organic
 396 corporate emblems placed in view of passing motorists, the
 397 Department of Transportation shall submit the program for
 398 legislative approval in the next regular legislative session.

399 Section 3. Section 479.01, Florida Statutes, is amended to
 400 read:

401 479.01 Definitions.—As used in this chapter, the term:

402 (1) "Allowable uses" means those uses that are authorized
 403 within a zoning category without the requirement to obtain a
 404 variance or waiver. The term includes conditional uses and those
 405 allowed by special exception, but does not include uses that are
 406 accessory, incidental to the allowable uses, or allowed only on

Page 14 of 59

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

576-03538-13 20131632c2

407 a temporary basis.

408 (2) "Automatic changeable facing" means a facing that is
 409 capable of delivering two or more advertising messages through
 410 an automated or remotely controlled process.

411 (3) "Business of outdoor advertising" means the business of
 412 ~~constructing, erecting,~~ operating, ~~using,~~ maintaining, leasing,
 413 or selling outdoor advertising structures, outdoor advertising
 414 signs, or outdoor advertisements.

415 ~~(4) "Commercial or industrial zone" means a parcel of land
 416 designated for commercial or industrial uses under both the
 417 future land use map of the comprehensive plan and the land use
 418 development regulations adopted pursuant to chapter 163. If a
 419 parcel is located in an area designated for multiple uses on the
 420 future land use map of a comprehensive plan and the zoning
 421 category of the land development regulations does not clearly
 422 designate that parcel for a specific use, the area will be
 423 considered an unzoned commercial or industrial area if it meets
 424 the criteria of subsection (26).~~

425 ~~(4)(5)~~ "Commercial use" means activities associated with
 426 the sale, rental, or distribution of products or the performance
 427 of services. The term includes, without limitation, such uses or
 428 activities as retail sales; wholesale sales; rentals of
 429 equipment, goods, or products; offices; restaurants; food
 430 service vendors; sports arenas; theaters; and tourist
 431 attractions.

432 ~~(5)(6)~~ "Controlled area" means 660 feet or less from the
 433 nearest edge of the right-of-way of any portion of the State
 434 Highway System, interstate, or federal-aid primary system and
 435 beyond 660 feet of the nearest edge of the right-of-way of any

576-03538-13 20131632c2

436 portion of the State Highway System, interstate, or federal-aid
 437 primary system outside an urban area.

438 ~~(6)(7)~~ "Department" means the Department of Transportation.

439 ~~(7)(8)~~ "Erect" means to construct, build, raise, assemble,
 440 place, affix, attach, create, paint, draw, or in any other way
 441 bring into being or establish; but it does not include any of
 442 the foregoing activities when performed as an incident to the
 443 change of advertising message or customary maintenance or repair
 444 of a sign.

445 ~~(8)(9)~~ "Federal-aid primary highway system" means the
 446 federal-aid primary highway system in existence on June 1, 1991,
 447 and any highway that was not a part of such system as of that
 448 date, but that is, or became after June 1, 1991, a part of the
 449 National Highway System, including portions that have been
 450 accepted as part of the National Highway System but are unbuilt
 451 or unopened existing, unbuilt, or unopened system of highways or
 452 portions thereof, which shall include the National Highway
 453 System, designated as the federal aid primary highway system by
 454 the department.

455 ~~(9)(10)~~ "Highway" means any road, street, or other way open
 456 or intended to be opened to the public for travel by motor
 457 vehicles.

458 ~~(10)(11)~~ "Industrial use" means activities associated with
 459 the manufacture, assembly, processing, or storage of products or
 460 the performance of services relating thereto. The term includes,
 461 without limitation, such uses or activities as automobile
 462 manufacturing or repair, boat manufacturing or repair, junk
 463 yards, meat packing facilities, citrus processing and packing
 464 facilities, produce processing and packing facilities,

576-03538-13

20131632c2

465 electrical generating plants, water treatment plants, sewage
466 treatment plants, and solid waste disposal sites.

467 ~~(11)~~~~(12)~~ "Interstate highway system" means the existing,
468 unbuilt, or unopened system of highways or portions thereof
469 designated as the national system of interstate and defense
470 highways by the department.

471 ~~(12)~~~~(13)~~ "Main-traveled way" means the traveled way of a
472 highway on which through traffic is carried. In the case of a
473 divided highway, the traveled way of each of the separate
474 roadways for traffic in opposite directions is a main-traveled
475 way. It does not include such facilities as frontage roads,
476 turning roadways which specifically include on-ramps or off-
477 ramps to the interstate highway system, or parking areas.

478 ~~(13)~~~~(14)~~ "Maintain" means to allow to exist.

479 ~~(14)~~~~(15)~~ "Motorist services directional signs" means signs
480 providing directional information about goods and services in
481 the interest of the traveling public where such signs were
482 lawfully erected and in existence on or before May 6, 1976, and
483 continue to provide directional information to goods and
484 services in a defined area.

485 ~~(15)~~~~(16)~~ "New highway" means the construction of any road,
486 paved or unpaved, where no road previously existed or the act of
487 paving any previously unpaved road.

488 ~~(16)~~~~(17)~~ "Nonconforming sign" means a sign which was
489 lawfully erected but which does not comply with the land use,
490 setback, size, spacing, and lighting provisions of state or
491 local law, rule, regulation, or ordinance passed at a later date
492 or a sign which was lawfully erected but which later fails to
493 comply with state or local law, rule, regulation, or ordinance

576-03538-13

20131632c2

494 due to changed conditions.

495 ~~(17)~~~~(18)~~ "Premises" means all the land areas under
496 ownership or lease arrangement to the sign owner which are
497 contiguous to the business conducted on the land except for
498 instances where such land is a narrow strip contiguous to the
499 advertised activity or is connected by such narrow strip, the
500 only viable use of such land is to erect or maintain an
501 advertising sign. When the sign owner is a municipality or
502 county, "premises" shall mean all lands owned or leased by such
503 municipality or county within its jurisdictional boundaries as
504 set forth by law.

505 ~~(18)~~~~(19)~~ "Remove" means to disassemble all sign materials
506 above ground level and, transport them from the site, ~~and~~
507 ~~dispose of sign materials by sale or destruction.~~

508 ~~(19)~~~~(20)~~ "Sign" means any combination of structure and
509 message in the form of an outdoor sign, display, device, figure,
510 painting, drawing, message, placard, poster, billboard,
511 advertising structure, advertisement, logo, symbol, or other
512 form, whether placed individually or on a V-type, back-to-back,
513 side-to-side, stacked, or double-faced display or automatic
514 changeable facing, designed, intended, or used to advertise or
515 inform, any part of the advertising message or informative
516 contents of which is visible from any place on the main-traveled
517 way. The term does not include an official traffic control sign,
518 official marker, or specific information panel erected, caused
519 to be erected, or approved by the department.

520 ~~(20)~~~~(21)~~ "Sign direction" means that direction from which
521 the message or informative contents are most visible to oncoming
522 traffic on the main-traveled way.

576-03538-13

20131632c2

523 (21)~~(22)~~ "Sign face" means the part of the sign, including
524 trim and background, which contains the message or informative
525 contents, including an automatic changeable face.

526 (22)~~(23)~~ "Sign facing" includes all sign faces and
527 automatic changeable faces displayed at the same location and
528 facing the same direction.

529 (23)~~(24)~~ "Sign structure" means all the interrelated parts
530 and material, such as beams, poles, and stringers, which are
531 constructed for the purpose of supporting or displaying a
532 message or informative contents.

533 (24)~~(25)~~ "State Highway System" has the same meaning as in
534 s. 334.03 ~~means the existing, unbuilt, or unopened system of~~
535 ~~highways or portions thereof designated as the State Highway~~
536 ~~System by the department.~~

537 ~~(26) "Unzoned commercial or industrial area" means a parcel~~
538 ~~of land designated by the future land use map of the~~
539 ~~comprehensive plan for multiple uses that include commercial or~~
540 ~~industrial uses but are not specifically designated for~~
541 ~~commercial or industrial uses under the land development~~
542 ~~regulations, in which three or more separate and distinct~~
543 ~~conforming industrial or commercial activities are located.~~

544 ~~(a) These activities must satisfy the following criteria:~~

545 ~~1. At least one of the commercial or industrial activities~~
546 ~~must be located on the same side of the highway and within 800~~
547 ~~feet of the sign location;~~

548 ~~2. The commercial or industrial activities must be within~~
549 ~~660 feet from the nearest edge of the right of way; and~~

550 ~~3. The commercial industrial activities must be within~~
551 ~~1,600 feet of each other.~~

576-03538-13

20131632c2

552
553 ~~Distances specified in this paragraph must be measured from the~~
554 ~~nearest outer edge of the primary building or primary building~~
555 ~~complex when the individual units of the complex are connected~~
556 ~~by covered walkways.~~

557 ~~(b) Certain activities, including, but not limited to, the~~
558 ~~following, may not be so recognized as commercial or industrial~~
559 ~~activities:~~

560 ~~1. Signs.~~

561 ~~2. Agricultural, forestry, ranching, grazing, farming, and~~
562 ~~related activities, including, but not limited to, wayside fresh~~
563 ~~produce stands.~~

564 ~~3. Transient or temporary activities.~~

565 ~~4. Activities not visible from the main traveled way.~~

566 ~~5. Activities conducted more than 660 feet from the nearest~~
567 ~~edge of the right of way.~~

568 ~~6. Activities conducted in a building principally used as a~~
569 ~~residence.~~

570 ~~7. Railroad tracks and minor sidings.~~

571 ~~8. Communication towers.~~

572 (25)~~(27)~~ "Urban area" has the same meaning as ~~defined~~ in s.
573 334.03(31).

574 (26)~~(28)~~ "Visible commercial or industrial activity" means
575 a commercial or industrial activity that is capable of being
576 seen without visual aid by a person of normal visual acuity from
577 the main-traveled way and that is generally recognizable as
578 commercial or industrial.

579 (27)~~(29)~~ "Visible sign" means that the advertising message
580 or informative contents of a sign, whether or not legible, is

576-03538-13 20131632c2

581 capable of being seen without visual aid by a person of normal
582 visual acuity.

583 ~~(28)~~~~(30)~~ "Wall mural" means a sign that is a painting or an
584 artistic work composed of photographs or arrangements of color
585 and that displays a commercial or noncommercial message, relies
586 solely on the side of the building for rigid structural support,
587 and is painted on the building or depicted on vinyl, fabric, or
588 other similarly flexible material that is held in place flush or
589 flat against the surface of the building. The term excludes a
590 painting or work placed on a structure that is erected for the
591 sole or primary purpose of signage.

592 ~~(29)~~~~(31)~~ "Zoning category" means the designation under the
593 land development regulations or other similar ordinance enacted
594 to regulate the use of land as provided in s. 163.3202(2)(b),
595 which designation sets forth the allowable uses, restrictions,
596 and limitations on use applicable to properties within the
597 category.

598 Section 4. Section 479.02, Florida Statutes, is amended to
599 read:

600 479.02 Duties of the department. ~~It shall be the duty of~~
601 The department shall ~~to~~:

602 (1) Administer and enforce the provisions of this chapter,
603 ~~and the 1972 agreement between the state and the United States~~
604 ~~Department of Transportation, relating to the size, lighting,~~
605 ~~and spacing of signs in accordance with Title I of the Highway~~
606 ~~Beautification Act of 1965 and Title 23, United States Code, and~~
607 ~~federal regulations, including, but not limited to, those~~
608 pertaining to the maintenance, continuance, and removal of
609 nonconforming signs in effect as of the effective date of this

576-03538-13 20131632c2

610 ~~act.~~

611 (2) Regulate size, height, lighting, and spacing of signs
612 permitted on commercial and industrial parcels and in unzoned
613 commercial or industrial areas ~~in zoned and unzoned commercial~~
614 ~~areas and zoned and unzoned industrial areas~~ on the interstate
615 highway system and the federal-aid primary highway system.

616 (3) Determine ~~unzoned~~ commercial and industrial parcels and
617 unzoned commercial or ~~areas and unzoned~~ industrial areas in the
618 manner provided in s. 479.024.

619 (4) Implement a specific information panel program on the
620 limited access interstate highway system to promote tourist-
621 oriented businesses by providing directional information safely
622 and aesthetically.

623 (5) Implement a rest area information panel or devices
624 program at rest areas along the interstate highway system and
625 the federal-aid primary highway system to promote tourist-
626 oriented businesses.

627 (6) Test and, if economically feasible, implement
628 alternative methods of providing information in the specific
629 interest of the traveling public which allow the traveling
630 public freedom of choice, conserve natural beauty, and present
631 information safely and aesthetically.

632 (7) Adopt such rules as it deems necessary or proper for
633 the administration of this chapter, including rules ~~that which~~
634 identify activities that may not be recognized as industrial or
635 commercial activities for purposes of determination of a ~~an area~~
636 ~~as an unzoned~~ commercial or industrial parcel or an unzoned
637 commercial or industrial area in the manner provided in s.
638 479.024.

576-03538-13

20131632c2

639 (8) ~~Prior to July 1, 1998,~~ Inventory and determine the
 640 location of all signs on the state, interstate and federal-aid
 641 primary highway systems to be used as. ~~Upon completion of the~~
 642 ~~inventory, it shall become~~ the database and permit information
 643 for all permitted signs ~~permitted at the time of completion, and~~
 644 ~~the previous records of the department shall be amended~~
 645 ~~accordingly~~. The inventory shall be updated no less than every 2
 646 years. ~~The department shall adopt rules regarding what~~
 647 ~~information is to be collected and preserved to implement the~~
 648 ~~purposes of this chapter~~. The department may perform the
 649 inventory using department staff, ~~or~~ may contract with a private
 650 firm to perform the work, whichever is more cost efficient. The
 651 department shall maintain a database of sign inventory
 652 information such as sign location, size, height, and structure
 653 type, the permitholder's name, and any other information the
 654 department finds necessary to administer the program.

655 Section 5. Section 479.024, Florida Statutes, is created to
 656 read:

657 479.024 Commercial and industrial parcels.—Signs shall only
 658 be permitted by the department in commercial or industrial
 659 zones, as determined by the local government, in compliance with
 660 chapter 163, unless otherwise provided in this chapter.

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

662 (a) "Parcel" means the property where the sign is located
 663 or is proposed to be located.

664 (b) "Utilities" includes all privately, publicly, or
 665 cooperatively owned lines, facilities, and systems for
 666 producing, transmitting, or distributing communications, power,
 667 electricity, light, heat, gas, oil, crude products, water,

576-03538-13

20131632c2

668 steam, waste, and stormwater not connected with the highway
 669 drainage, and other similar commodities.

670 (2) The determination as to zoning by the local government
 671 for the parcel must meet the following criteria:

672 (a) The parcel is comprehensively zoned and includes
 673 commercial or industrial uses as allowable uses.

674 (b) The parcel can reasonably accommodate a commercial or
 675 industrial use under the future land use map of the
 676 comprehensive plan and land use development regulations, as
 677 follows:

678 1. Sufficient utilities are available to support commercial
 679 or industrial development.

680 2. The size, configuration, and public access of the parcel
 681 are sufficient to accommodate a commercial or industrial use,
 682 given requirements in the comprehensive plan and land
 683 development regulations for vehicular access, on-site
 684 circulation, building setbacks, buffering, parking, and other
 685 applicable standards or the parcel consists of railroad tracks
 686 or minor sidings abutting commercial or industrial property that
 687 meets the criteria of this subsection.

688 (c) The parcel is not being used exclusively for
 689 noncommercial or nonindustrial uses.

690 (3) If a local government has not designated zoning through
 691 land development regulations in compliance with chapter 163, but
 692 has designated the parcel under the future land use map of the
 693 comprehensive plan for uses that include commercial or
 694 industrial uses, the parcel shall be considered an unzoned
 695 commercial or industrial area. For a permit to be issued for a
 696 sign in an unzoned commercial or industrial area, there must be

576-03538-13 20131632c2

697 three or more distinct commercial or industrial activities
 698 within 1,600 feet of each other, with at least one of the
 699 commercial or industrial activities located on the same side of
 700 the highway as the sign location, and within 800 feet of the
 701 sign location. Multiple commercial or industrial activities
 702 enclosed in one building when all uses have only shared building
 703 entrances shall be considered one use.

704 (4) For purposes of this section, certain uses and
 705 activities may not be independently recognized as commercial or
 706 industrial, including, but not limited to:

707 (a) Signs.

708 (b) Agricultural, forestry, ranching, grazing, farming, and
 709 related activities, including, but not limited to, wayside fresh
 710 produce stands.

711 (c) Transient or temporary activities.

712 (d) Activities not visible from the main-traveled way,
 713 unless a department transportation facility is the only cause
 714 for the activity not being visible.

715 (e) Activities conducted more than 660 feet from the
 716 nearest edge of the right-of-way.

717 (f) Activities conducted in a building principally used as
 718 a residence.

719 (g) Railroad tracks and minor sidings, unless such use is
 720 immediately abutted by commercial or industrial property that
 721 meets the criteria in subsection (2).

722 (h) Communication towers.

723 (i) Governmental uses, unless those governmental uses would
 724 be industrial in nature if privately owned and operated. Such
 725 industrial uses must be the present and actual use, not merely

576-03538-13 20131632c2

726 be among the allowed uses.

727 (5) If the local government has indicated that the proposed
 728 sign location is on a parcel that is in a commercial or
 729 industrial zone, but the department finds that it is not, the
 730 department shall notify the sign applicant in writing of its
 731 determination.

732 (6) An applicant whose application for a permit is denied
 733 may, within 30 days after the receipt of the notification of
 734 intent to deny, request an administrative hearing pursuant to
 735 chapter 120 for a determination of whether the parcel is located
 736 in a commercial or industrial zone. Upon receipt of such
 737 request, the department shall notify the local government that
 738 the applicant has requested an administrative hearing pursuant
 739 to chapter 120.

740 (7) If the department in a final order determines that the
 741 parcel does not meet the permitting conditions in this section
 742 and a sign structure exists on the parcel, the applicant shall
 743 remove the sign within 30 days after the date of the order and
 744 is responsible for all sign removal costs.

745 (8) If the Federal Highway Administration reduces funds
 746 that would otherwise be apportioned to the department due to a
 747 local government's failure to be compliant with this section,
 748 the department shall reduce apportioned transportation funding
 749 to the local government by an equivalent amount.

750 Section 6. Section 479.03, Florida Statutes, is amended to
 751 read:

752 479.03 Jurisdiction of the Department of Transportation;
 753 entry upon privately owned lands.—The territory under the
 754 jurisdiction of the department for the purpose of this chapter

576-03538-13

20131632c2

755 shall include all the state. Employees, agents, or independent
 756 contractors working for the department, in the performance of
 757 their functions and duties under the provisions of this chapter,
 758 may enter into and upon any land upon which a sign is displayed,
 759 is proposed to be erected, or is being erected and make such
 760 inspections, surveys, and removals as may be relevant. Upon
 761 written notice to ~~After receiving consent by~~ the landowner,
 762 operator, or person in charge of an intervening privately owned
 763 land that ~~or appropriate inspection warrant issued by a judge of~~
 764 ~~any county court or circuit court of this state which has~~
 765 ~~jurisdiction of the place or thing to be removed,~~ that the
 766 removal of an illegal outdoor advertising sign is necessary and
 767 has been authorized by a final order or results from an
 768 uncontested notice to the sign owner, the department may shall
 769 ~~be authorized to~~ enter upon any intervening privately owned
 770 lands for the purposes of effectuating removal of illegal signs,
 771 provided that the department shall only do so in circumstances
 772 where it has determined that no other legal or economically
 773 feasible means of entry to the sign site are reasonably
 774 available. Except as otherwise provided by this chapter, the
 775 department shall be responsible for the repair or replacement in
 776 a like manner for any physical damage or destruction of private
 777 property, other than the sign, incidental to the department's
 778 entry upon such intervening privately owned lands.

779 Section 7. Section 479.04, Florida Statutes, is amended to
 780 read:

781 479.04 Business of outdoor advertising; license
 782 requirement; renewal; fees.-

783 (1) A ~~No~~ person may not shall engage in the business of

576-03538-13

20131632c2

784 outdoor advertising in this state without first obtaining a
 785 license ~~therefor~~ from the department. Such license shall be
 786 renewed annually. The fee for such license, and for each annual
 787 renewal, is \$300. License renewal fees shall be payable as
 788 provided for in s. 479.07.

789 (2) A ~~No~~ person is not shall be required to obtain the
 790 license provided for in this section solely to erect or
 791 construct outdoor advertising signs or structures ~~as an~~
 792 ~~incidental part of a building construction contract.~~

793 Section 8. Section 479.05, Florida Statutes, is amended to
 794 read:

795 479.05 Denial, suspension, or revocation of license.-The
 796 department may has authority to deny, suspend, or revoke any
 797 license requested or granted under this chapter in any case in
 798 which it determines that the application for the license
 799 contains knowingly false or misleading information of material
 800 consequence, that the licensee has failed to pay fees or costs
 801 owed to the department for outdoor advertising purposes, or that
 802 the licensee has violated any of the provisions of this chapter,
 803 unless such licensee, within 30 days after the receipt of notice
 804 by the department, corrects such false or misleading
 805 information, pays the outstanding amounts, or complies with the
 806 provisions of this chapter. Suspension of a license allows the
 807 licensee to maintain existing sign permits, but the department
 808 may not grant a transfer of an existing permit or issue an
 809 additional permit to a licensee with a suspended license. Any
 810 person aggrieved by an any action of the department which
 811 denies, suspends, or revokes ~~in denying or revoking~~ a license
 812 under this chapter may, within 30 days after from the receipt of

576-03538-13 20131632c2

813 the notice, apply to the department for an administrative
814 hearing pursuant to chapter 120.

815 Section 9. Section 479.07, Florida Statutes, is amended to
816 read:

817 479.07 Sign permits.—

818 (1) Except as provided in ss. 479.105(1) ~~479.105(1)(c)~~ and
819 479.16, a person may not erect, operate, use, or maintain, or
820 cause to be erected, operated, used, or maintained, any sign on
821 the State Highway System outside an urban area, ~~as defined in s.~~
822 ~~334.03(31)~~, or on any portion of the interstate or federal-aid
823 primary highway system without first obtaining a permit for the
824 sign from the department and paying the annual fee as provided
825 in this section. As used in this section, the term "on any
826 portion of the State Highway System, interstate, or federal-aid
827 primary system" means a sign located within the controlled area
828 which is visible from any portion of the main-traveled way of
829 such system.

830 (2) ~~A person may not apply for a permit unless he or she~~
831 ~~has first obtained the~~ Written permission of the owner or other
832 person in lawful possession or control of the site designated as
833 the location of the sign is required for issuance of a ~~in the~~
834 ~~application for the permit.~~

835 (3) (a) An application for a sign permit must be made on a
836 form prescribed by the department, and a separate application
837 must be submitted for each permit requested. A permit is
838 required for each sign facing.

839 (b) As part of the application, the applicant or his or her
840 authorized representative must certify in a notarized signed
841 ~~statement~~ that all information provided in the application is

576-03538-13 20131632c2

842 true and correct ~~and that, pursuant to subsection (2), he or she~~
843 ~~has obtained the written permission of the owner or other person~~
844 ~~in lawful possession of the site designated as the location of~~
845 ~~the sign in the permit application.~~ Every permit application
846 must be accompanied by the appropriate permit fee, ~~+~~ a signed
847 statement by the owner or other person in lawful control of the
848 site on which the sign is located or will be erected,
849 authorizing the placement of the sign on that site, ~~+~~ and, ~~where~~
850 ~~local governmental regulation of signs exists,~~ a statement from
851 the appropriate local governmental official indicating that the
852 sign complies with all local government ~~governmental~~
853 requirements and, if a local government permit is required for a
854 sign, that the agency or unit of local government will issue a
855 permit to that applicant upon approval of the state permit
856 application by the department.

857 (c) The annual permit fee for each sign facing shall be
858 established by the department by rule in an amount sufficient to
859 offset the total cost to the department for the program, but
860 shall not exceed \$100. The ~~A~~ fee may not be prorated for a
861 ~~period less than the remainder of the permit year to accommodate~~
862 ~~short term publicity features; however, a~~ first-year fee may be
863 prorated by payment of an amount equal to one-fourth of the
864 annual fee for each remaining whole quarter or partial quarter
865 of the permit year. Applications received after the end of the
866 third quarter of the permit year must include fees for the last
867 quarter of the current year and fees for the succeeding year. A
868 nonrefundable application fee of \$25 must accompany each permit
869 application.

870 (4) An application for a permit shall be acted on by

576-03538-13

20131632c2

871 granting, denying, or returning the incomplete application the
 872 ~~department~~ within 30 days after receipt of the application by
 873 the department.

874 (5) (a) For each permit issued, the department shall furnish
 875 to the applicant a serially numbered permanent metal permit tag.
 876 The permittee is responsible for maintaining a valid permit tag
 877 on each permitted sign facing at all times. The tag shall be
 878 securely attached to the upper 50 percent of the sign structure
 879 ~~sign facing or, if there is no facing, on the pole nearest the~~
 880 ~~highway,~~ and ~~it~~ shall be attached in such a manner as to be
 881 plainly visible from the main-traveled way. ~~Effective July 1,~~
 882 ~~2012, the tag must be securely attached to the upper 50 percent~~
 883 ~~of the pole nearest the highway and must be attached in such a~~
 884 ~~manner as to be plainly visible from the main traveled way.~~ The
 885 permit ~~becomes void unless the permit~~ tag must be ~~is~~ properly
 886 and permanently displayed at the permitted site within 30 days
 887 after the date of permit issuance. If the permittee fails to
 888 erect a completed sign on the permitted site within 270 days
 889 after the date on which the permit was issued, the permit will
 890 be void, and the department may not issue a new permit to that
 891 permittee for the same location for 270 days after the date on
 892 which the permit became void.

893 (b) If a permit tag is lost, stolen, or destroyed, the
 894 permittee to whom the tag was issued must apply to the
 895 department for a replacement tag. The department shall adopt a
 896 rule establishing a service fee for replacement tags in an
 897 amount that will recover the actual cost of providing the
 898 replacement tag. Upon receipt of the application accompanied by
 899 the service fee, the department shall issue a replacement permit

Page 31 of 59

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

576-03538-13

20131632c2

900 tag. ~~Alternatively, the permittee may provide its own~~
 901 ~~replacement tag pursuant to department specifications that the~~
 902 ~~department shall adopt by rule at the time it establishes the~~
 903 ~~service fee for replacement tags.~~

904 (6) A permit is valid only for the location specified in
 905 the permit. Valid permits may be transferred from one sign owner
 906 to another upon written acknowledgment from the current
 907 permittee and submittal of a transfer fee of \$5 for each permit
 908 to be transferred. However, the maximum transfer fee for any
 909 multiple transfer between two outdoor advertisers in a single
 910 transaction is \$1,000 ~~\$100~~.

911 (7) A permittee shall at all times maintain the permission
 912 of the owner or other person in lawful control of the sign site
 913 to have and maintain a sign at such site.

914 (8) (a) In order to reduce peak workloads, the department
 915 may adopt rules providing for staggered expiration dates for
 916 licenses and permits. Unless otherwise provided for by rule, all
 917 licenses and permits expire annually on January 15. All license
 918 and permit renewal fees are required to be submitted to the
 919 department by no later than the expiration date. At least 105
 920 days before ~~prior to~~ the expiration date of licenses and
 921 permits, the department shall send to each permittee a notice of
 922 fees due for all licenses and permits that ~~which~~ were issued to
 923 him or her before ~~prior to~~ the date of the notice. Such notice
 924 shall list the permits and the permit fees due for each sign
 925 facing. The permittee shall, no later than 45 days before ~~prior~~
 926 ~~to~~ the expiration date, advise the department of any additions,
 927 deletions, or errors contained in the notice. Permit tags which
 928 are not renewed shall be returned to the department for

Page 32 of 59

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

576-03538-13

20131632c2

929 cancellation by the expiration date. Permits which are not
 930 renewed or are canceled shall be certified in writing at that
 931 time as canceled or not renewed by the permittee, and permit
 932 tags for such permits shall be returned to the department or
 933 shall be accounted for by the permittee in writing, which
 934 writing shall be submitted with the renewal fee payment or the
 935 cancellation certification. However, failure of a permittee to
 936 submit a permit cancellation ~~does shall~~ not affect the
 937 nonrenewal of a permit. ~~Before~~ Prior to cancellation of a
 938 permit, the permittee shall provide written notice to all
 939 persons or entities having a right to advertise on the sign that
 940 the permittee intends to cancel the permit.

941 (b) If a permittee has not submitted his or her fee payment
 942 by the expiration date of the licenses or permits, the
 943 department shall send a notice of violation to the permittee
 944 within 45 days after the expiration date, requiring the payment
 945 of the permit fee within 30 days after the date of the notice
 946 and payment of a delinquency fee equal to 10 percent of the
 947 original amount due or, in the alternative to these payments,
 948 requiring the filing of a request for an administrative hearing
 949 to show cause why ~~the his or her~~ sign should not be subject to
 950 immediate removal due to expiration of his or her license or
 951 permit. If the permittee submits payment as required by the
 952 violation notice, ~~the his or her~~ license or permit will be
 953 automatically reinstated and such reinstatement will be
 954 retroactive to the original expiration date. If the permittee
 955 does not respond to the notice of violation within the 30-day
 956 period, the department shall, within 30 days, issue a final
 957 notice of sign removal and may, following 90 days after the date

Page 33 of 59

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

576-03538-13

20131632c2

958 of the department's final notice of sign removal, remove the
 959 sign without incurring any liability as a result of such
 960 removal. However, if at any time before removal of the sign, the
 961 permittee demonstrates that a good faith error on the part of
 962 the permittee resulted in cancellation or nonrenewal of the
 963 permit, the department may reinstate the permit if:

- 964 1. The permit reinstatement fee of ~~up to~~ \$300 ~~based on the~~
 965 ~~size of the sign~~ is paid;
- 966 2. All other permit renewal and delinquent permit fees due
 967 as of the reinstatement date are paid; and
- 968 3. The permittee reimburses the department for all actual
 969 costs resulting from the permit cancellation or nonrenewal.

970 (c) Conflicting applications filed by other persons for the
 971 same or competing sites covered by a permit subject to paragraph
 972 (b) may not be approved until after the sign subject to the
 973 expired permit has been removed.

974 (d) The cost for removing a sign, whether by the department
 975 or an independent contractor, shall be assessed by the
 976 department against the permittee.

977 (9) (a) A permit ~~may shall~~ not be granted for any sign for
 978 which a permit had not been granted by the effective date of
 979 this act unless such sign is located at least:

- 980 1. One thousand five hundred feet from any other permitted
 981 sign on the same side of the highway, if on an interstate
 982 highway.
- 983 2. One thousand feet from any other permitted sign on the
 984 same side of the highway, if on a federal-aid primary highway.

985
 986 The minimum spacing provided in this paragraph does not preclude

Page 34 of 59

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

576-03538-13 20131632c2

987 the permitting of V-type, back-to-back, side-to-side, stacked,
 988 or double-faced signs at the permitted sign site. If a sign is
 989 visible to more than one highway subject to the jurisdiction of
 990 the department and within the controlled area of the highways
 991 ~~from the controlled area of more than one highway subject to the~~
 992 ~~jurisdiction of the department~~, the sign ~~must~~ shall meet the
 993 permitting requirements of all highways, and, ~~if the sign meets~~
 994 ~~the applicable permitting requirements~~, be permitted ~~to~~ the
 995 highway having the more stringent permitting requirements.

996 (b) A permit ~~may~~ shall not be granted for a sign pursuant
 997 to this chapter to locate such sign on any portion of the
 998 interstate or federal-aid primary highway system, which sign:

999 1. Exceeds 50 feet in sign structure height above the crown
 1000 of the main-traveled way to which the sign is permitted, if
 1001 outside an incorporated area;

1002 2. Exceeds 65 feet in sign structure height above the crown
 1003 of the main-traveled way to which the sign is permitted, if
 1004 inside an incorporated area; or

1005 3. Exceeds 950 square feet of sign facing including all
 1006 embellishments.

1007 (c) Notwithstanding subparagraph (a)1., ~~there is~~
 1008 ~~established a pilot program in Orange, Hillsborough, and Osceola~~
 1009 ~~Counties, and within the boundaries of the City of Miami, under~~
 1010 ~~which~~ the distance between permitted signs on the same side of
 1011 an interstate highway may be reduced to 1,000 feet if all other
 1012 requirements of this chapter are met and if:

1013 1. The local government has adopted a plan, program,
 1014 resolution, ordinance, or other policy encouraging the voluntary
 1015 removal of signs in a downtown, historic, redevelopment, infill,

576-03538-13 20131632c2

1016 or other designated area which also provides for a new or
 1017 replacement sign to be erected on an interstate highway within
 1018 that jurisdiction if a sign in the designated area is removed;

1019 2. The sign owner and the local government mutually agree
 1020 to the terms of the removal and replacement; and

1021 3. The local government notifies the department of its
 1022 intention to allow such removal and replacement as agreed upon
 1023 pursuant to subparagraph 2.

1024 ~~4. The new or replacement sign to be erected on an~~
 1025 ~~interstate highway within that jurisdiction is to be located on~~
 1026 ~~a parcel of land specifically designated for commercial or~~
 1027 ~~industrial use under both the future land use map of the~~
 1028 ~~comprehensive plan and the land use development regulations~~
 1029 ~~adopted pursuant to chapter 163, and such parcel shall not be~~
 1030 ~~subject to an evaluation in accordance with the criteria set~~
 1031 ~~forth in s. 479.01(26) to determine if the parcel can be~~
 1032 ~~considered an unzoned commercial or industrial area.~~

1033 ~~The department shall maintain statistics tracking the use of the~~
 1034 ~~provisions of this pilot program based on the notifications~~
 1035 ~~received by the department from local governments under this~~
 1036 ~~paragraph.~~

1037 (d) This subsection does not cause a sign that was
 1038 conforming on October 1, 1984, to become nonconforming.

1039 (10) Commercial or industrial zoning ~~that which~~ is not
 1040 comprehensively enacted or ~~that which~~ is enacted primarily to
 1041 permit signs ~~may~~ shall not be recognized as commercial or
 1042 industrial zoning for purposes of this provision, and permits
 1043 ~~may~~ shall not be issued for signs in such areas. The department
 1044

576-03538-13 20131632c2

1045 shall adopt rules ~~that within 180 days after this act takes~~
 1046 ~~effect which shall~~ provide criteria to determine whether such
 1047 zoning is comprehensively enacted or enacted primarily to permit
 1048 signs.

1049 Section 10. Section 479.08, Florida Statutes, is amended to
 1050 read:

1051 479.08 Denial or revocation of permit.—The department may
 1052 deny or revoke any permit requested or granted under this
 1053 chapter in any case in which it determines that the application
 1054 for the permit contains ~~knowingly~~ false or misleading
 1055 information of material consequence. The department may revoke
 1056 any permit granted under this chapter in any case in which the
 1057 permittee has violated any of the provisions of this chapter,
 1058 unless such permittee, within 30 days after the receipt of
 1059 notice by the department, complies with the provisions of this
 1060 chapter. For the purpose of this section, the notice of
 1061 violation issued by the department must describe in detail the
 1062 alleged violation. Any person aggrieved by any action of the
 1063 department in denying or revoking a permit under this chapter
 1064 may, within 30 days after receipt of the notice, apply to the
 1065 department for an administrative hearing pursuant to chapter
 1066 120. If a timely request for hearing has been filed and the
 1067 department issues a final order revoking a permit, such
 1068 revocation shall be effective 30 days after the date of
 1069 rendition. Except for department action pursuant to s.
 1070 479.107(1), the filing of a timely and proper notice of appeal
 1071 shall operate to stay the revocation until the department's
 1072 action is upheld.

1073 Section 11. Section 479.10, Florida Statutes, is amended to

576-03538-13 20131632c2

1074 read:

1075 479.10 Sign removal following permit revocation or
 1076 cancellation.—A sign shall be removed by the permittee within 30
 1077 days after the date of revocation or cancellation of the permit
 1078 for the sign. If the permittee fails to remove the sign within
 1079 the 30-day period, the department shall remove the sign at the
 1080 permittee's expense with or without further notice and without
 1081 incurring any liability as a result of such removal.

1082 Section 12. Section 479.105, Florida Statutes, is amended
 1083 to read:

1084 479.105 Signs erected or maintained without required
 1085 permit; removal.—

1086 (1) Any sign which is located adjacent to the right-of-way
 1087 of any highway on the State Highway System outside an
 1088 incorporated area or adjacent to the right-of-way on any portion
 1089 of the interstate or federal-aid primary highway system, which
 1090 sign was erected, operated, or maintained without the permit
 1091 required by s. 479.07(1) having been issued by the department,
 1092 is declared to be a public nuisance and a private nuisance and
 1093 shall be removed as provided in this section.

1094 (a) Upon a determination by the department that a sign is
 1095 in violation of s. 479.07(1), the department shall prominently
 1096 post on the sign, or as close to the sign as possible for those
 1097 locations where the sign is not easily accessible, face a notice
 1098 stating that the sign is illegal and must be removed within 30
 1099 days after the date on which the notice was posted. ~~However, if~~
 1100 ~~the sign bears the name of the licensee or the name and address~~
 1101 ~~of the nonlicensed sign owner,~~ The department shall,
 1102 concurrently with and in addition to posting the notice on the

576-03538-13 20131632c2

1103 sign, provide a written notice to the owner of the sign, the
 1104 advertiser displayed on the sign, or the owner of the property,
 1105 stating that the sign is illegal and must be permanently removed
 1106 within the 30-day period specified on the posted notice. The
 1107 written notice shall further state that a hearing may be
 1108 requested, the sign owner has a right to request a hearing,
 1109 which request must be filed with the department within 30 days
 1110 after receipt the date of the written notice. However, the
 1111 filing of a request for a hearing will not stay the removal of
 1112 the sign.

1113 (b) If, pursuant to the notice provided, the sign is not
 1114 removed by the ~~sign~~ owner of the sign, the advertiser displayed
 1115 on the sign, or the owner of the property within the prescribed
 1116 period, the department shall immediately remove the sign without
 1117 further notice; and, for that purpose, the employees, agents, or
 1118 independent contractors of the department may enter upon private
 1119 property without incurring any liability for so entering.

1120 (c) However, the department may issue a permit for a sign,
 1121 as a conforming or nonconforming sign, if the sign owner
 1122 demonstrates to the department one of the following:

1123 1. If the sign meets the current requirements of this
 1124 chapter for a sign permit, the sign owner may submit the
 1125 required application package and receive a permit as a
 1126 conforming sign, upon payment of all applicable fees.

1127 2. If the sign does not meet the current requirements of
 1128 this chapter for a sign permit, the sign owner may receive a
 1129 permit as a nonconforming sign if the department determines that
 1130 the sign is not located on state right-of-way and is not a
 1131 safety hazard and if the sign owner pays a penalty fee of \$300

576-03538-13 20131632c2

1132 and all pertinent fees required by this chapter, including
 1133 annual permit renewal fees payable since the date of the
 1134 erection of the sign, and attaches to the permit application
 1135 package documentation that demonstrates that:

1136 a. The sign has been unpermitted, structurally unchanged,
 1137 and continuously maintained at the same location for a period of
 1138 7 years or more;

1139 b. During the entire period in which the sign has been
 1140 erected, a permit was required but was not obtained;

1141 c. During the initial 7 years in which the sign has been
 1142 erected, the sign would have met the criteria established in
 1143 this chapter at that time for issuance of a permit; and

1144 d. The department has not initiated a notice of violation
 1145 or taken other action to remove the sign during the initial 7-
 1146 year period.

1147 (d) This subsection does not cause a neighboring sign that
 1148 is permitted and that is within the spacing requirements in s.
 1149 479.07(9)(a) to become nonconforming.

1150 (e) ~~(e)~~ For purposes of this subsection, a notice to the
 1151 sign owner, when required, constitutes sufficient notice; and
 1152 notice is not required to be provided to the lessee, advertiser,
 1153 or the owner of the real property on which the sign is located.

1154 (f) ~~(d)~~ If, after a hearing, it is determined that a sign
 1155 has been wrongfully or erroneously removed pursuant to this
 1156 subsection, the department, at the sign owner's discretion,
 1157 shall either pay just compensation to the owner of the sign or
 1158 reerect the sign in kind at the expense of the department.

1159 ~~(e) However, if the sign owner demonstrates to the~~
 1160 ~~department that:~~

576-03538-13

20131632c2

1161 ~~1. The sign has been unpermitted, structurally unchanged,~~
 1162 ~~and continuously maintained at the same location for a period of~~
 1163 ~~7 years or more;~~

1164 ~~2. At any time during the period in which the sign has been~~
 1165 ~~erected, the sign would have met the criteria established in~~
 1166 ~~this chapter for issuance of a permit;~~

1167 ~~3. The department has not initiated a notice of violation~~
 1168 ~~or taken other action to remove the sign during the initial 7-~~
 1169 ~~year period described in subparagraph 1.; and~~

1170 ~~4. The department determines that the sign is not located~~
 1171 ~~on state right of way and is not a safety hazard;~~

1172 ~~the sign may be considered a conforming or nonconforming sign~~
 1173 ~~and may be issued a permit by the department upon application in~~
 1174 ~~accordance with this chapter and payment of a penalty fee of~~
 1175 ~~€300 and all pertinent fees required by this chapter, including~~
 1176 ~~annual permit renewal fees payable since the date of the~~
 1177 ~~erection of the sign.~~

1179 (2) (a) If a sign is under construction and the department
 1180 determines that a permit has not been issued for the sign as
 1181 required under the provisions of this chapter, the department is
 1182 authorized to require that all work on the sign cease until the
 1183 sign owner shows that the sign does not violate the provisions
 1184 of this chapter. The order to cease work shall be prominently
 1185 posted on the sign structure, and no further notice is required
 1186 to be given. The failure of a sign owner or her or his agents to
 1187 immediately comply with the order shall subject the sign to
 1188 prompt removal by the department.

1189 (b) For the purposes of this subsection only, a sign is

576-03538-13

20131632c2

1190 under construction when it is in any phase of initial
 1191 construction prior to the attachment and display of the
 1192 advertising message in final position for viewing by the
 1193 traveling public. A sign that is undergoing routine maintenance
 1194 or change of the advertising message only is not considered to
 1195 be under construction for the purposes of this subsection.

1196 (3) The cost of removing a sign, whether by the department
 1197 or an independent contractor, shall be assessed against the
 1198 owner of the sign by the department.

1199 Section 13. Subsections (5) and (7) of section 479.106,
 1200 Florida Statutes, are amended to read:

1201 479.106 Vegetation management.—

1202 (5) The department may only grant a permit pursuant to s.
 1203 479.07 for a new sign which requires the removal, cutting, or
 1204 trimming of existing trees or vegetation on public right-of-way
 1205 for the sign face to be visible from the highway when the sign
 1206 owner has removed at least two nonconforming signs of
 1207 approximate comparable size and surrendered the permits for the
 1208 nonconforming signs to the department for cancellation. For
 1209 signs originally permitted after July 1, 1996, the first
 1210 application, or application for a change of view zone, ~~no permit~~
 1211 for the removal, cutting, or trimming of trees or vegetation
 1212 shall require, in addition to mitigation or contribution to a
 1213 plan of mitigation, the removal of two nonconforming signs. No
 1214 permits for the removal, cutting, or trimming of trees may be
 1215 granted for signs permitted after July 1, 1996 ~~be granted~~ where
 1216 such trees or vegetation are part of a beautification project
 1217 implemented ~~before~~ prior to the date of the original sign permit
 1218 application, when the beautification project is specifically

576-03538-13 20131632c2

1219 identified in the department's construction plans, permitted
1220 landscape projects, or agreements.

1221 (7) Any person engaging in removal, cutting, or trimming of
1222 trees or vegetation in violation of this section or benefiting
1223 from such actions shall be subject to an administrative penalty
1224 of up to \$1,000 per sign facing and required to mitigate for the
1225 unauthorized removal, cutting, or trimming in such manner and in
1226 such amount as may be required under the rules of the
1227 department.

1228 Section 14. Subsection (5) of section 479.107, Florida
1229 Statutes, is amended to read:

1230 479.107 Signs on highway rights-of-way; removal.-

1231 (5) The cost of removing a sign, whether by the department
1232 or an independent contractor, shall be assessed by the
1233 department against the owner of the sign. ~~Furthermore, the~~
1234 ~~department shall assess a fine of \$75 against the sign owner for~~
1235 ~~any sign which violates the requirements of this section.~~

1236 Section 15. Section 479.111, Florida Statutes, is amended
1237 to read:

1238 479.111 Specified signs allowed within controlled portions
1239 of the interstate and federal-aid primary highway system.—Only
1240 the following signs shall be allowed within controlled portions
1241 of the interstate highway system and the federal-aid primary
1242 highway system as set forth in s. 479.11(1) and (2):

1243 (1) Directional or other official signs and notices which
1244 conform to 23 C.F.R. ss. 750.151-750.155.

1245 (2) Signs in commercial-zoned and industrial-zoned areas or
1246 commercial-unzoned and industrial-unzoned areas and within 660
1247 feet of the nearest edge of the right-of-way, subject to the

576-03538-13 20131632c2

1248 requirements set forth in the 1972 agreement between the state
1249 and the United States Department of Transportation.

1250 (3) Signs for which permits are not required under s.
1251 479.16.

1252 Section 16. Section 479.15, Florida Statutes, is amended to
1253 read:

1254 479.15 Harmony of regulations.—

1255 (1) No zoning board or commission or other public officer
1256 or agency shall issue a permit to erect any sign which is
1257 prohibited under the provisions of this chapter or the rules of
1258 the department, nor shall the department issue a permit for any
1259 sign which is prohibited by any other public board, officer, or
1260 agency in the lawful exercise of its powers.

1261 (2) A municipality, county, local zoning authority, or
1262 other local governmental entity may not remove, or cause to be
1263 removed, any lawfully erected sign along any portion of the
1264 interstate or federal-aid primary highway system without first
1265 paying just compensation for such removal. A local governmental
1266 entity may not cause in any way the alteration of any lawfully
1267 erected sign located along any portion of the interstate or
1268 federal-aid primary highway system without payment of just
1269 compensation if such alteration constitutes a taking under state
1270 law. The municipality, county, local zoning authority, or other
1271 local government entity that adopts requirements for such
1272 alteration shall pay just compensation to the sign owner if such
1273 alteration constitutes a taking under state law. This subsection
1274 applies only to a lawfully erected sign the subject matter of
1275 which relates to premises other than the premises on which it is
1276 located or to merchandise, services, activities, or

576-03538-13

20131632c2

1277 entertainment not sold, produced, manufactured, or furnished on
 1278 the premises on which the sign is located. ~~As used in this~~
 1279 ~~subsection, the term "federal aid primary highway system" means~~
 1280 ~~the federal aid primary highway system in existence on June 1,~~
 1281 ~~1991, and any highway that was not a part of such system as of~~
 1282 ~~that date but that is or becomes after June 1, 1991, a part of~~
 1283 ~~the National Highway System.~~ This subsection shall not be
 1284 interpreted as explicit or implicit legislative recognition that
 1285 alterations do or do not constitute a taking under state law.

1286 (3) It is the express intent of the Legislature to limit
 1287 the state right-of-way acquisition costs on state and federal
 1288 roads in eminent domain proceedings, the provisions of ss.
 1289 479.07 and 479.155 notwithstanding. Subject to approval by the
 1290 Federal Highway Administration, whenever public acquisition of
 1291 land upon which is situated a lawful permitted nonconforming
 1292 sign occurs, as provided in this chapter, the sign may, at the
 1293 election of its owner and the department, be relocated or
 1294 reconstructed adjacent to the new right-of-way and in close
 1295 proximity to the current site along the roadway within 100 feet
 1296 of the current location, provided the ~~nonconforming~~ sign is not
 1297 relocated in an area inconsistent with s. 479.024 on a parcel
 1298 zoned residential, and provided further that such relocation
 1299 shall be subject to ~~applicable setback~~ requirements in the 1972
 1300 agreement between the state and the United States Department of
 1301 Transportation. The sign owner shall pay all costs associated
 1302 with relocating or reconstructing any sign under this
 1303 subsection, and neither the state nor any local government shall
 1304 reimburse the sign owner for such costs, unless part of such
 1305 relocation costs are required by federal law. If no adjacent

Page 45 of 59

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

576-03538-13

20131632c2

1306 property is available for the relocation, the department shall
 1307 be responsible for paying the owner of the sign just
 1308 compensation for its removal.

1309 (4) ~~For a nonconforming sign, such relocation shall be~~
 1310 ~~adjacent to the current site and~~ the face of the sign may shall
 1311 not be increased in size or height or structurally modified at
 1312 the point of relocation in a manner inconsistent with the
 1313 current building codes of the jurisdiction in which the sign is
 1314 located.

1315 (5) In the event that relocation can be accomplished but is
 1316 inconsistent with the ordinances of the municipality or county
 1317 within whose jurisdiction the sign is located, the ordinances of
 1318 the local government shall prevail, provided that the local
 1319 government shall assume the responsibility to provide the owner
 1320 of the sign just compensation for its removal, but in no event
 1321 shall compensation paid by the local government exceed the
 1322 compensation required under state or federal law. Further, the
 1323 provisions of this section shall not impair any agreement or
 1324 future agreements between a municipality or county and the owner
 1325 of a sign or signs within the jurisdiction of the municipality
 1326 or county. ~~Nothing in this section shall be deemed to cause a~~
 1327 ~~nonconforming sign to become conforming solely as a result of~~
 1328 ~~the relocation allowed in this section.~~

1329 (6) The provisions of subsections (3), (4), and (5) of this
 1330 section shall not apply within the jurisdiction of any
 1331 municipality which is engaged in any litigation concerning its
 1332 sign ordinance on April 23, 1999, nor shall such provisions
 1333 apply to any municipality whose boundaries are identical to the
 1334 county within which said municipality is located.

Page 46 of 59

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

576-03538-13

20131632c2

1335 (7) This section does not cause a neighboring sign that is
 1336 already permitted and that is within the spacing requirements
 1337 established in s. 479.07(9)(a) to become nonconforming.

1338 Section 17. Section 479.156, Florida Statutes, is amended
 1339 to read:

1340 479.156 Wall murals.—Notwithstanding any other provision of
 1341 this chapter, a municipality or county may permit and regulate
 1342 wall murals within areas designated by such government. If a
 1343 municipality or county permits wall murals, a wall mural that
 1344 displays a commercial message and is within 660 feet of the
 1345 nearest edge of the right-of-way within an area adjacent to the
 1346 interstate highway system or the federal-aid primary highway
 1347 system shall be located in an area that is zoned for industrial
 1348 or commercial use and the municipality or county shall establish
 1349 and enforce regulations for such areas that, at a minimum, set
 1350 forth criteria governing the size, lighting, and spacing of wall
 1351 murals consistent with the intent of 23 U.S.C. s. 131 ~~the~~
 1352 ~~Highway Beautification Act of 1965~~ and with customary use.
 1353 Whenever a municipality or county exercises such control and
 1354 makes a determination of customary use pursuant to 23 U.S.C. s.
 1355 131(d), such determination shall be accepted in lieu of controls
 1356 in the agreement between the state and the United States
 1357 Department of Transportation, and the department shall notify
 1358 the Federal Highway Administration pursuant to the agreement, 23
 1359 U.S.C. s. 131(d), and 23 C.F.R. s. 750.706(c). A wall mural that
 1360 is subject to municipal or county regulation and 23 U.S.C. s.
 1361 131 the Highway Beautification Act of 1965 must be approved by
 1362 the Department of Transportation and the Federal Highway
 1363 Administration when required by federal law and federal

Page 47 of 59

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

576-03538-13

20131632c2

1364 regulation under the agreement between the state and the United
 1365 States Department of Transportation and federal regulations
 1366 enforced by the Department of Transportation under s. 479.02(1).
 1367 The existence of a wall mural as defined in s. 479.01(28)
 1368 ~~479.01(30)~~ shall not be considered in determining whether a sign
 1369 as defined in s. 479.01(19) ~~479.01(20)~~, either existing or new,
 1370 is in compliance with s. 479.07(9)(a).

1371 Section 18. Section 479.16, Florida Statutes, is amended to
 1372 read:

1373 479.16 Signs for which permits are not required.—The
 1374 following signs are exempt from the requirement that a permit
 1375 for a sign be obtained under the provisions of this chapter but
 1376 are required to comply with the provisions of s. 479.11(4)-(8),
 1377 and the provisions of subsections (15)-(19) may not be
 1378 implemented or continued if the Federal Government notifies the
 1379 department that implementation or continuation will adversely
 1380 affect the allocation of federal funds to the department:

1381 (1) Signs erected on the premises of an establishment,
 1382 which signs consist primarily of the name of the establishment
 1383 or which identify the principal or accessory merchandise,
 1384 services, activities, or entertainment sold, produced,
 1385 manufactured, or furnished on the premises of the establishment
 1386 and which comply with the lighting restrictions ~~under department~~
 1387 ~~rule adopted~~ pursuant to s. 479.11(5), or signs owned by a
 1388 municipality or a county located on the premises of such
 1389 municipality or such county which display information regarding
 1390 government services, activities, events, or entertainment. For
 1391 purposes of this section, the following types of messages shall
 1392 not be considered information regarding government services,

Page 48 of 59

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

576-03538-13 20131632c2

1393 activities, events, or entertainment:

1394 (a) Messages which specifically reference any commercial
1395 enterprise.

1396 (b) Messages which reference a commercial sponsor of any
1397 event.

1398 (c) Personal messages.

1399 (d) Political campaign messages.

1400

1401 If a sign located on the premises of an establishment consists
1402 principally of brand name or trade name advertising and the
1403 merchandise or service is only incidental to the principal
1404 activity, or if the owner of the establishment receives rental
1405 income from the sign, then the sign is not exempt under this
1406 subsection.

1407 (2) Signs erected, used, or maintained on a farm by the
1408 owner or lessee of such farm and relating solely to farm
1409 produce, merchandise, service, or entertainment sold, produced,
1410 manufactured, or furnished on such farm.

1411 (3) Signs posted or displayed on real property by the owner
1412 or by the authority of the owner, stating that the real property
1413 is for sale or rent. However, if the sign contains any message
1414 not pertaining to the sale or rental of that real property, then
1415 it is not exempt under this section.

1416 (4) Official notices or advertisements posted or displayed
1417 on private property by or under the direction of any public or
1418 court officer in the performance of her or his official or
1419 directed duties, or by trustees under deeds of trust or deeds of
1420 assignment or other similar instruments.

1421 (5) Danger or precautionary signs relating to the premises

576-03538-13 20131632c2

1422 on which they are located; forest fire warning signs erected
1423 under the authority of the Florida Forest Service of the
1424 Department of Agriculture and Consumer Services; and signs,
1425 notices, or symbols erected by the United States Government
1426 under the direction of the United States Forestry Service.

1427 (6) Notices of any railroad, bridge, ferry, or other
1428 transportation or transmission company necessary for the
1429 direction or safety of the public.

1430 (7) Signs, notices, or symbols for the information of
1431 aviators as to location, directions, and landings and conditions
1432 affecting safety in aviation erected or authorized by the
1433 department.

1434 (8) Signs or notices erected or maintained upon property
1435 stating only the name of the owner, lessee, or occupant of the
1436 premises and not exceeding 16 ~~±~~ square feet in area.

1437 (9) Historical markers erected by duly constituted and
1438 authorized public authorities.

1439 (10) Official traffic control signs and markers erected,
1440 caused to be erected, or approved by the department.

1441 (11) Signs erected upon property warning the public against
1442 hunting and fishing or trespassing thereon.

1443 (12) Signs not in excess of 16 ~~±~~ square feet that are owned
1444 by and relate to the facilities and activities of churches,
1445 civic organizations, fraternal organizations, charitable
1446 organizations, or units or agencies of government.

1447 (13) ~~Except that~~ Signs placed on benches, transit shelters,
1448 modular news racks, street light poles, public pay telephones,
1449 and waste receptacles, within the right-of-way, as provided for
1450 in s. 337.408 are exempt from all provisions of this chapter.

576-03538-13

20131632c2

1451 (14) Signs relating exclusively to political campaigns.

1452 (15) Signs not in excess of 16 square feet placed at a road
 1453 junction with the State Highway System denoting only the
 1454 distance or direction of a residence or farm operation, or,
 1455 outside an incorporated in a rural area where a hardship is
 1456 created because a small business is not visible from the road
 1457 junction with the State Highway System, one sign not in excess
 1458 of 16 square feet, denoting only the name of the business and
 1459 the distance and direction to the business. ~~The small business-~~
 1460 ~~sign provision of this subsection does not apply to charter~~
 1461 ~~counties and may not be implemented if the Federal Government~~
 1462 ~~notifies the department that implementation will adversely~~
 1463 ~~affect the allocation of federal funds to the department.~~

1464 (16) Signs placed by a local tourist-oriented business
 1465 located within a rural area of critical economic concern, as
 1466 defined by s. 288.0656(2)(d)and(e), and are:

1467 (a) Not more than 8 square feet in size or more than 4 feet
 1468 in height;

1469 (b) Located only in rural areas, along non-limited access
 1470 highways;

1471 (c) Located within 2 miles of the business location and are
 1472 not less than 500 feet apart;

1473 (d) Located only in two directions leading to the business;
 1474 and

1475 (e) Not located within the road right-of-way.

1476
 1477 A business placing such signs must be at least 4 miles from any
 1478 other business using this exemption and may not participate in
 1479 any other department directional signage program.

576-03538-13

20131632c2

1480 (17) Signs not in excess of 32 square feet placed
 1481 temporarily during harvest season of a farm operation for a
 1482 period of no more than 4 months at a road junction with the
 1483 State Highway System denoting only the distance or direction of
 1484 the farm operation.

1485 (18) Acknowledgement signs erected upon publicly funded
 1486 school premises relating to a specific public school club, team,
 1487 or event placed no closer than 1,000 feet from another
 1488 acknowledgment sign on the same side of the roadway. All sponsor
 1489 information on an acknowledgement sign may constitute no more
 1490 than 100 square feet of the sign. As used in this subsection,
 1491 the term "acknowledgement signs" means signs that are intended
 1492 to inform the traveling public that a public school club, team,
 1493 or event has been sponsored by a person, firm, or other entity.

1494 (19) Displays erected upon a sports facility which display
 1495 content directly related to the facility's activities or where a
 1496 presence of the products or services offered on the property
 1497 exists. Displays are to be mounted flush or flat to the surface
 1498 of the sports facility and rely upon the building facade for
 1499 structural support. For purposes of this subsection, the term
 1500 "sports facility", means any athletic complex, athletic arena,
 1501 or athletic stadium, including physically connected parking
 1502 facilities, which is open to the public and has a permanent
 1503 installed seating capacity of 15,000 or more.

1504
 1505 If the exemptions in subsections (15)-(19) are not implemented
 1506 or continued due to notification from the Federal Government to
 1507 the department that the allocation of federal funds to the
 1508 department will be adversely impacted, the department shall

576-03538-13 20131632c2

1509 provide notice to the sign owner that the sign must be removed
 1510 within 30 days after receiving the notice. If the sign is not
 1511 removed within the 30 days, the department may remove the sign
 1512 and all costs incurred in connection with the sign removal shall
 1513 be assessed against and collected from the sign owner.

1514 Section 19. Section 479.24, Florida Statutes, is amended to
 1515 read:

1516 479.24 Compensation for ~~removal of~~ signs; eminent domain;
 1517 exceptions.-

1518 (1) Just compensation shall be paid by the department upon
 1519 the department's acquisition ~~removal~~ of a lawful conforming or
 1520 nonconforming sign along any portion of the interstate or
 1521 federal-aid primary highway system. This section does not apply
 1522 to a sign which is illegal at the time of its removal. A sign
 1523 will lose its nonconforming status and become illegal at such
 1524 time as it fails to be permitted or maintained in accordance
 1525 with all applicable laws, rules, ordinances, or regulations
 1526 other than the provision which makes it nonconforming. A legal
 1527 nonconforming sign under state law or rule will not lose its
 1528 nonconforming status solely because it additionally becomes
 1529 nonconforming under an ordinance or regulation of a local
 1530 governmental entity passed at a later date. The department shall
 1531 make every reasonable effort to negotiate the purchase of the
 1532 signs to avoid litigation and congestion in the courts.

1533 (2) The department is not required to remove any sign under
 1534 this section if the federal share of the just compensation to be
 1535 paid upon removal of the sign is not available to make such
 1536 payment, unless an appropriation by the Legislature for such
 1537 purpose is made to the department.

Page 53 of 59

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

576-03538-13 20131632c2

1538 (3) (a) The department is authorized to use the power of
 1539 eminent domain when necessary to carry out the provisions of
 1540 this chapter.

1541 (b) If eminent domain procedures are instituted, just
 1542 compensation shall be made pursuant to the state's eminent
 1543 domain procedures, chapters 73 and 74.

1544 Section 20. Section 479.25, Florida Statutes, is amended to
 1545 read:

1546 479.25 Erection of noise-attenuation barrier blocking view
 1547 of sign; procedures; application.-

1548 (1) The owner of a lawfully erected sign that is governed
 1549 by and conforms to state and federal requirements for land use,
 1550 size, height, and spacing may increase the height above ground
 1551 level of such sign at its permitted location if a noise-
 1552 attenuation barrier is permitted by or erected by any
 1553 governmental entity in such a way as to screen or block
 1554 visibility of the sign. Any increase in height permitted under
 1555 this section may only be the increase in height which is
 1556 required to achieve the same degree of visibility from the
 1557 right-of-way which the sign had prior to the construction of the
 1558 noise-attenuation barrier, notwithstanding the restrictions
 1559 contained in s. 479.07(9)(b). A sign reconstructed under this
 1560 section shall comply with the building standards and wind load
 1561 requirements set forth in the Florida Building Code. If
 1562 construction of a proposed noise-attenuation barrier will screen
 1563 a sign lawfully permitted under this chapter, the department
 1564 shall provide notice to the local government or local
 1565 jurisdiction within which the sign is located prior to
 1566 construction ~~erection of the noise-attenuation barrier~~. Upon a

Page 54 of 59

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

576-03538-13 20131632c2

1567 determination that an increase in the height of a sign as
 1568 permitted under this section will violate a provision contained
 1569 in an ordinance or land development regulation of the local
 1570 government or local jurisdiction, prior to construction, the
 1571 local government or local jurisdiction shall ~~so notify the~~
 1572 ~~department. When notice has been received from the local~~
 1573 ~~government or local jurisdiction prior to erection of the noise-~~
 1574 ~~attenuation barrier, the department shall:~~

1575 (a) Provide a variance or waiver to the local ordinance or
 1576 land development regulations to ~~Conduct a written survey of all~~
 1577 ~~property owners identified as impacted by highway noise and who~~
 1578 ~~may benefit from the proposed noise attenuation barrier. The~~
 1579 ~~written survey shall inform the property owners of the location,~~
 1580 ~~date, and time of the public hearing described in paragraph (b)~~
 1581 ~~and shall specifically advise the impacted property owners that:~~

1582 1. ~~Erection of the noise attenuation barrier may block the~~
 1583 ~~visibility of an existing outdoor advertising sign;~~

1584 2. ~~The local government or local jurisdiction may restrict~~
 1585 ~~or prohibit increasing the height of the existing outdoor~~
 1586 ~~advertising sign to make it visible over the barrier; and~~

1587 3. ~~If a majority of the impacted property owners vote for~~
 1588 ~~construction of the noise attenuation barrier, the local~~
 1589 ~~government or local jurisdiction will be required to:~~

1590 ~~a. allow an increase in the height of the sign in violation~~
 1591 ~~of a local ordinance or land development regulation;~~

1592 ~~(b) b.~~ Allow the sign to be relocated or reconstructed at
 1593 another location if the sign owner agrees; or

1594 ~~(c) c.~~ Pay the fair market value of the sign and its
 1595 associated interest in the real property.

576-03538-13 20131632c2

1596 ~~(2) (b)~~ The department shall hold a public hearing within
 1597 the boundaries of the affected local governments or local
 1598 jurisdictions to receive input on the proposed noise-attenuation
 1599 barrier and its conflict with the local ordinance or land
 1600 development regulation and to suggest or consider alternatives
 1601 or modifications ~~to the proposed noise attenuation barrier~~ to
 1602 alleviate or minimize the conflict with the local ordinance or
 1603 land development regulation or minimize any costs that may be
 1604 associated with relocating, reconstructing, or paying for the
 1605 affected sign. The public hearing may be held concurrently with
 1606 other public hearings scheduled for the project. The department
 1607 shall provide a written notification to the local government or
 1608 local jurisdiction of the date and time of the public hearing
 1609 and shall provide general notice of the public hearing in
 1610 accordance with the notice provisions of s. 335.02(1). The
 1611 notice shall not be placed in that portion of a newspaper in
 1612 which legal notices or classified advertisements appear. The
 1613 notice shall specifically state that:

1614 ~~(a) 1.~~ Erection of the proposed noise-attenuation barrier
 1615 may block the visibility of an existing outdoor advertising
 1616 sign;

1617 ~~(b) 2.~~ The local government or local jurisdiction may
 1618 restrict or prohibit increasing the height of the existing
 1619 outdoor advertising sign ~~to make it visible over the barrier;~~
 1620 and

1621 ~~(c) 3.~~ Upon ~~if a majority of the impacted property owners~~
 1622 ~~vote for~~ construction of the noise-attenuation barrier, the
 1623 local government or local jurisdiction shall ~~will be required~~
 1624 ~~to:~~

576-03538-13

20131632c2

1625 ~~1.a.~~ Allow an increase in the height of the sign through a
 1626 waiver or variance to in violation of a local ordinance or land
 1627 development regulation;

1628 ~~2.b.~~ Allow the sign to be relocated or reconstructed at
 1629 another location if the sign owner agrees; or

1630 ~~3.c.~~ Pay the fair market value of the sign and its
 1631 associated interest in the real property.

1632 ~~(3)(2)~~ The department may ~~shall~~ not permit erection of the
 1633 noise-attenuation barrier to the extent the barrier screens or
 1634 blocks visibility of the sign until after the public hearing is
 1635 held and until such time as the survey has been conducted and a
 1636 majority of the impacted property owners have indicated approval
 1637 to erect the noise attenuation barrier. When the impacted
 1638 property owners approve of the noise attenuation barrier
 1639 construction, the department shall notify the local governments
 1640 or local jurisdictions. The local government or local
 1641 jurisdiction shall, notwithstanding the provisions of a
 1642 conflicting ordinance or land development regulation:

1643 ~~(a) Issue a permit by variance or otherwise for the~~
 1644 ~~reconstruction of a sign under this section;~~

1645 ~~(b) Allow the relocation of a sign, or construction of~~
 1646 ~~another sign, at an alternative location that is permittable~~
 1647 ~~under the provisions of this chapter, if the sign owner agrees~~
 1648 ~~to relocate the sign or construct another sign; or~~

1649 ~~(c) Refuse to issue the required permits for reconstruction~~
 1650 ~~of a sign under this section and pay fair market value of the~~
 1651 ~~sign and its associated interest in the real property to the~~
 1652 ~~owner of the sign.~~

1653 ~~(4)(3)~~ This section does ~~shall~~ not apply to the provisions

576-03538-13

20131632c2

1654 of any existing written agreement executed before July 1, 2006,
 1655 between any local government and the owner of an outdoor
 1656 advertising sign.

1657 Section 21. Subsection (1) of section 479.261, Florida
 1658 Statutes, is amended to read:

1659 479.261 Logo sign program.—

1660 (1) The department shall establish a logo sign program for
 1661 the rights-of-way of the limited access interstate highway
 1662 system to provide information to motorists about available gas,
 1663 food, lodging, camping, attractions, and other services, as
 1664 approved by the Federal Highway Administration, at interchanges
 1665 through the use of business logos and may include additional
 1666 interchanges under the program.

1667 (a) As used in this chapter, the term "attraction" means an
 1668 establishment, site, facility, or landmark that is open a
 1669 minimum of 5 days a week for 52 weeks a year; that has as its
 1670 principal focus family-oriented entertainment, cultural,
 1671 educational, recreational, scientific, or historical activities;
 1672 and that is publicly recognized as a bona fide tourist
 1673 attraction.

1674 (b) The department shall incorporate the use of RV-friendly
 1675 markers on specific information logo signs for establishments
 1676 that cater to the needs of persons driving recreational
 1677 vehicles. Establishments that qualify for participation in the
 1678 specific information logo program and that also qualify as "RV-
 1679 friendly" may request the RV-friendly marker on their specific
 1680 information logo sign. An RV-friendly marker must consist of a
 1681 design approved by the Federal Highway Administration. The
 1682 department shall adopt rules in accordance with chapter 120 to

576-03538-13

20131632c2

1683 administer this paragraph, including rules setting forth the
1684 minimum requirements that establishments must meet in order to
1685 qualify as RV-friendly. These requirements shall include large
1686 parking spaces, entrances, and exits that can easily accommodate
1687 recreational vehicles and facilities having appropriate overhead
1688 clearances, if applicable.

1689 Section 22. Section 479.313, Florida Statutes, is amended
1690 to read:

1691 479.313 Permit revocation and cancellation; cost of
1692 removal.—All costs incurred by the department in connection with
1693 the removal of a sign located within a controlled area adjacent
1694 to the State Highway System, interstate highway system, or
1695 federal-aid primary highway system following the revocation or
1696 cancellation of the permit for such sign shall be assessed
1697 against and collected from the permittee.

1698 Section 23. Section 76 of chapter 2012-174, Laws of
1699 Florida, is repealed.

1700 Section 24. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 / 9 / 2013

Meeting Date

Topic _____

Bill Number 1632
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

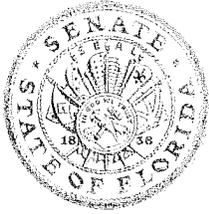
Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR JACK LATVALA
20th District

April 3, 2013

RECEIVED

APR 04 2013

**SENATE
RULES COMMITTEE**

The Honorable John Thrasher
Senate Rules Committee
404 S. Monroe St., 201C
Tallahassee, FL 32399-1100

Dear Chairman Thrasher:

I respectfully request that my bill, SB 1632/Transportation, be placed on the agenda of the Senate Rules Committee at the earliest possible time. The bill was favorably considered by the Senate Appropriations Committee on April 3.

This bill updates Chapter 479 including statutes relating to land use and zoning. Florida DOT has worked on a project to update the Chapter to provide consistence and clarity to the regulatory responsibilities relating to outdoor advertising. The Department and the industry have agreed to this language.

Please contact me if you have any questions regarding this request. I appreciate your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

JL:tc

CC: John Phelps, Staff Director

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: EL 110

Caption: Senate Rules Committee

Case:

Judge:

Type:

Started: 4/9/2013 9:04:49 AM

Ends: 4/9/2013 11:58:34 AM

Length: 02:53:46

9:04:51 AM Senator Thrasher calls the meeting to order
9:05:08 AM roll call
9:05:28 AM quorum present
9:05:48 AM SB 402 by Senator Joyner
9:06:09 AM Senator Joyner explains bill
9:06:15 AM Individuals waive in support
9:07:33 AM Ruth Brandwein speaks in support
9:08:16 AM Individuals waive in support
9:09:15 AM Brian Anderson, BSW Student, speaks for bill
9:10:05 AM Senator Joyner waives close
9:10:20 AM roll call
9:10:41 AM CS/SB 402 reported favorably
9:11:10 AM SB 832 by Senator Joyner
9:11:26 AM Senator Joyner explains bill
9:11:46 AM Kenneth Pratt, Florida Bankers Association, waives in support
9:12:10 AM Martha Edenfield, Real Property, Probate, & Trust Section of Florida Bar, waives in support
9:12:14 AM Senator Joyner waives close
9:12:18 AM roll call
9:12:25 AM SB 832 reported favorably
9:12:49 AM CS/CS/SB 972 by Senator Hukill
9:13:21 AM Senator Hukill explains bill
9:13:41 AM Louis Rotundo, Alachua County, waives in support
9:13:49 AM Senator Hukill waives close
9:13:56 AM roll call
9:14:01 AM CS/CS/SB 972 reported favorably
9:14:33 AM CS/SB 632 by Senator Soto
9:15:04 AM Senator Soto explains bill
9:16:20 AM Colonel Mike Prendergast, Florida Department of Veterans Affairs, speaks for bill
9:17:25 AM Frank Mirabella, Disabled American Veterans Dept of Florida, speaks against bill
9:20:37 AM Jim Brodie, FL Dept of Veterans Affairs, speaks for bill
9:21:51 AM Senator Gardiner asks question
9:22:52 AM Mr. Brodie answers
9:23:20 AM John Hayes, The Florida Veterans Foundation, waives in support
9:23:28 AM Susan Goldstein, FLA Wildflower Foundation & FSLPA, speaks for bill
9:25:07 AM Senator Soto closes on bill
9:25:13 AM roll call
9:25:58 AM CS/SB 632 reported favorably
9:26:31 AM SB 1066 by Senator Richter
9:26:47 AM Senator Richter explains bill
9:26:53 AM Brian Pitts, Justice-2-Jesus, speaks on bill
9:28:11 AM Casey Stoutamire, Florida Dental Association, waives in support
9:28:31 AM Senator Richter waives close
9:28:34 AM roll call
9:28:39 AM SB 1066 reported favorably
9:29:04 AM CS/SB 274 by Senator Dean
9:29:34 AM Senator Dean explains bill
9:29:52 AM Senator Lee asks question
9:30:42 AM Senator Dean answers
9:31:24 AM Senator Lee follows up
9:31:33 AM Senator Latvala answers
9:32:09 AM Senator Dean
9:32:59 AM Amendment 247518 by Senator Latvala

9:33:13 AM Senator Dean explains amendment
9:33:29 AM Senator Dean waives close on amendment
9:33:50 AM Amendment adopted
9:33:51 AM Senator Lee
9:34:16 AM Senator Thrasher
9:34:49 AM Senator Dean
9:34:59 AM Senator Dean waives close
9:35:07 AM Senator Dean moves to CS bill
9:35:16 AM roll call
9:35:16 AM CS/CS/SB 274 reported favorably
9:35:51 AM CS/SB 496 by Senator Dean
9:36:04 AM Senator Dean explains bill
9:36:11 AM Brian Pitts, Justice-2-Jesus, speaks on bill
9:38:19 AM Silvester Dawson, Supreme Court Marshal, here for info
9:39:20 AM Eric Maclure, State Courts System, waives in support
9:39:31 AM Senator Dean waives close
9:39:35 AM roll call
9:39:55 AM CS/SB 496 reported favorably
9:40:19 AM CS/CS/CS/SB 390 by Senator Dean
9:40:32 AM Senator Dean explains bill
9:40:57 AM Brian Pitts, Justice-2-Jesus, waives in support
9:41:19 AM Senator Dean waives close
9:41:28 AM roll call
9:41:31 AM CS/CS/CS/SB 390 reported favorably
9:41:54 AM CS/SB 778 by Senator Thompson
9:42:15 AM Senator Thompson explains bill
9:42:52 AM Senator Thompson waives close
9:43:09 AM roll call
9:43:15 AM CS/SB 778 reported favorably
9:43:30 AM CS/SB 102 by Senator Detert
9:43:46 AM Senator Detert explains bill
9:45:48 AM Senator Smith asks question
9:46:00 AM Senator Detert reponds
9:46:18 AM Brian Pitts, Justice-2-Jesus, waives in support
9:46:43 AM Michael Sheedy, Florida Conference of Catholic Bishops, waives in support
9:46:48 AM Senator Detert waives close
9:46:56 AM roll call
9:47:03 AM CS/SB 102 reported favorably
9:47:34 AM SB 376 by Senator Hays
9:47:48 AM Senator Hays explains bill
9:48:06 AM Eric Dietrich, FSA & Volusia County Sheriff's Office, waives in support
9:48:14 AM Brian Pitts, Justice-2-Jesus waives in suport
9:48:24 AM Senator Hays moves to CS bill
9:48:28 AM Senator Hays waives close
9:48:36 AM roll call
9:48:58 AM CS/SB 376 reported favorably
9:49:09 AM SB 604 by Senator Bean
9:49:26 AM Senator Bean explains bill
9:49:59 AM Holly Miller, FMA, waives in support
9:50:14 AM Stephen R. Winn, Florida Osteopathic Medical Association, waives in support
9:50:33 AM Judy Rivenbark, PRN of Florida, waives in support
9:50:43 AM Senator Bean waives close
9:50:53 AM roll call
9:51:02 AM SB 604 reported favorably
9:51:25 AM CS/CS/SB 658 by Senator Simpson
9:51:36 AM Senator Simpson explains bill
9:52:01 AM Brian Pitts, Justice-2-Jesus, waives in support
9:52:28 AM Slater Bayliss, Free Flow Wine, waives in support
9:52:36 AM Senator Simpson waives close
9:52:40 AM roll call
9:52:56 AM CS/CS/SB 658 reported favorably
9:53:19 AM CS/CS/SB 682 by Senator Simpson

9:53:31 AM Senator Simpson explains bill
9:54:35 AM Stephanie Kunkel, Clean Water Action, speaks against bill
9:55:10 AM Mary Jean Yon, Audubon Florida, speaks against bill
9:57:28 AM David Cullen, Sierra Club FL, speaks against bill
9:59:36 AM Frank Matthews, Florida Electric Power Coordinating Group, speaks for bill
10:00:48 AM Senator Latvala asks question
10:01:53 AM Mr. Matthews answers
10:02:12 AM Senator Latvala follows up
10:02:27 AM Mr. Matthews answers
10:02:38 AM Senator Latvala
10:03:06 AM Mr. Matthews responds
10:03:19 AM Senator Simpson closes on bill
10:03:53 AM roll call
10:04:35 AM CS/CS/SB 682 reported favorably
10:05:13 AM Senator Richter moves to vote on previous bills
10:05:23 AM Without objection, motion adopted
10:05:42 AM CS/SB 1768 by Senator Brandes
10:06:34 AM Senator Brandes waives close
10:06:39 AM roll call
10:06:51 AM CS/SB 1768 reported favorably
10:07:05 AM Senator Diaz de la Portilla moves to vote on previous bill
10:07:14 AM Without objection, motion adopted
10:07:19 AM CS/SB 904 by Senator Brandes
10:07:28 AM Senator Brandes explains bill
10:08:18 AM Senator Montford asks question
10:08:29 AM Senator Brandes responds
10:09:01 AM Senator Montford follows up
10:09:07 AM Senator Brandes answers
10:09:14 AM Sen Montford
10:09:29 AM Senator Brandes responds
10:09:48 AM Senator Montford
10:10:14 AM Senator Brandes responds
10:10:26 AM Senator Latvala asks question
10:10:55 AM Senator Brandes answers
10:12:14 AM Senator Latvala follows up
10:12:20 AM Senator Brandes responds
10:12:25 AM Senator Latvala
10:12:29 AM Senator Brandes answers
10:13:42 AM Senator Latvala
10:13:47 AM Senator Brandes responds
10:14:27 AM Senator Sobel
10:15:27 AM Senator Brandes answers
10:16:03 AM Senator Sobel follows up
10:16:55 AM Senator Brandes responds
10:17:27 AM Senator Margolis asks question
10:18:03 AM Senator Brandes answers
10:19:08 AM Amendment 349806 by Senator Negron
10:20:08 AM Senator Brandes explains amendment
10:20:18 AM Senator Latvala asks question
10:20:26 AM Senator Brandes answers
10:21:25 AM Senator Latvala
10:21:32 AM Senator Brandes responds
10:22:16 AM Senator Brandes waives close on amendment
10:22:33 AM Amendment adopted
10:22:37 AM Amendment 601806 by Senator Negron
10:22:53 AM Senator Brandes explains amendment
10:23:26 AM Senator Montford asks question
10:23:34 AM Senator Brandes answers
10:24:01 AM Senator Montford
10:24:54 AM Senator Brandes responds
10:25:54 AM Senator Montford
10:26:37 AM Senator Brandes responds

10:27:00 AM Senator Brandes waives close on amendment
10:27:12 AM Amendment adopted
10:27:17 AM Amendment 758750 by Senator Negron
10:27:27 AM Senator Brandes explains amendment
10:27:36 AM Amendment adopted
10:27:40 AM Brian Pitts, Justice-2-Jesus, speaks on bill
10:29:49 AM Adam Giery, FL Chamber of Commerce, waives in support
10:30:48 AM Senator Montford speaks on bill
10:31:27 AM Senator Margolis speaks on bill
10:32:26 AM Senator Galvano speaks on bill
10:34:08 AM Senator Sobel speaks on bill
10:34:27 AM Senator Brandes closes on bill
10:35:27 AM roll call
10:35:39 AM CS/CS/SB 904 reported favorably
10:36:44 AM CS/SB 544 by Senator Braynon
10:36:57 AM Senator Braynon explains bill
10:37:44 AM Amendment 293924 by Senator Lee
10:38:15 AM Senator Lee explains amendment
10:39:38 AM Senator Thrasher
10:39:45 AM Senator Braynon speaks on amendment
10:40:12 AM Amendment adopted
10:40:23 AM Senator Braynon waives close
10:40:58 AM roll call
10:41:12 AM CS/CS/SB 544 reported favorably
10:41:38 AM CS/CS/SB 1382 by Senator Latvala
10:42:08 AM Senator Latvala explains bill
10:46:16 AM Senator Diaz de la Portilla
10:46:31 AM Senator Latvala answers
10:46:57 AM Senator Diaz de la Portilla follows up
10:47:47 AM Senator Latvala answers
10:48:01 AM Senator Diaz de la Portilla
10:48:42 AM Senator Latvala responds
10:48:52 AM Senator Diaz de la Portilla
10:48:59 AM Senator Latvala answers
10:49:08 AM Senator Diaz de la Portilla
10:49:21 AM Senator Latvala responds
10:49:34 AM Senator Smith asks question
10:50:11 AM Senator Latvala responds
10:50:20 AM Senator Ring asks question
10:50:48 AM Senator Latvala answers
10:51:20 AM Senator Ring follows up
10:52:17 AM Senator Latvala responds
10:52:34 AM Senator Ring
10:52:38 AM Senator Latvala
10:53:11 AM Senator Ring
10:54:26 AM Senator Latvala responds
10:56:12 AM Senator Lee asks question
10:57:13 AM Senator Latvala answers
10:57:41 AM Senator Lee
10:57:49 AM Senator Latvala responds
10:57:59 AM Senator Lee follows up
10:58:34 AM Senator Latvala answers
10:58:55 AM Senator Sobel asks question
10:59:19 AM Senator Latvala answers
10:59:29 AM Senator Sobel follow up
10:59:38 AM Senator Latvala answers
10:59:46 AM Senator Sobel
11:00:13 AM Senator Latvala answers
11:00:21 AM Amendment 454416 by Senator Latvala
11:01:10 AM Senator Latvala explains amendment
11:01:30 AM Senator Latvala waives close on amendment
11:01:32 AM Amendment adopted

11:01:37 AM Amendment 245104 by Senator Latvala
11:01:47 AM Senator Latvala explains amendment
11:01:56 AM Senator Latvala waives close on amendment
11:02:01 AM Amendment adopted
11:02:04 AM Amendment 718076 by Senator Latvala
11:02:14 AM Senator Latvala explains amendment
11:02:28 AM Senator Latvala waives close on amendment
11:02:29 AM Amendment adopted
11:02:38 AM Amendment 143642 by Senator Gardiner
11:02:54 AM Senator Gardiner explains amendment
11:03:12 AM Senator Latvala supports amendment
11:03:18 AM Senator Gardiner waives close on amendment
11:03:25 AM Amendment adopted
11:03:29 AM Amendment 139494 by Senator Gardiner
11:03:36 AM Senator Gardiner withdraws amendment
11:03:44 AM Amendment 386524 by Senator Gardiner
11:03:53 AM Senator Gardiner explains amendment
11:03:57 AM Amendment adopted
11:04:05 AM Brian Pitts, Justice-2-Jesus, speaks on bill
11:08:13 AM Jessica Lowe-Minor, League of Women Voters of Florida, speaks against bill
11:08:49 AM Brad Ashwell speaks on bill
11:10:43 AM Senator Lee asks question
11:11:00 AM Mr. Ashwell answers
11:11:50 AM Senator Lee follows up
11:12:34 AM Mr. Ashwell responds
11:12:39 AM Senator Lee
11:13:14 AM Senator Latvala moves to CS bill
11:13:53 AM Senator Latvala waives close
11:13:59 AM roll call
11:14:03 AM CS/CS/CS/SB 1382 reported favorably
11:14:37 AM SB 1042 by Senator Abruzzo
11:15:01 AM Jessica Neer explains bill
11:15:20 AM Richard Gentry, Palm Bch Economic Council, waives in support
11:15:37 AM Brian Pitts, Justice-2-Jesus, speaks on bill
11:16:19 AM Ms. Neer waives close
11:16:26 AM roll call
11:16:28 AM SB 1042 reported favorably
11:16:49 AM CS/CS/SB 1632 by Senator Latvala
11:17:07 AM Senator Latvala explains bill
11:17:24 AM Amendment 961630 by Senator Latvala
11:18:24 AM Senator Latvala explains amendment
11:18:43 AM Senator Latvala waives close on amendment
11:18:52 AM Amendment adopted
11:18:55 AM Amendment 934516 by Senator Latvala
11:19:04 AM Senator Latvala explains amendment
11:19:25 AM Senator Latvala waives close on amendment
11:20:16 AM Amendment adopted
11:20:20 AM Amendment 104756
11:20:28 AM Senator Latvala explains amendment
11:20:47 AM Senator Latvala withdraws amendment
11:21:47 AM Brian Pitts, Justice-2-Jesus, speaks on bill
11:23:39 AM Senator Latvala moves to CS bill
11:23:48 AM Senator Latvala waives close
11:23:49 AM roll call
11:23:56 AM CS/CS/CS/SB 1632 reported favorably
11:24:21 AM Senator Galvano
11:24:28 AM Senator Richter
11:24:44 AM Senator Beacquisto
11:24:55 AM CS/SB 142 by Senator Altman
11:25:50 AM Selene Bruns explains bill
11:26:27 AM Deborah Linton, The ARC of Florida, waives in support
11:26:27 AM Dixie Sansom, The ARC of Florida, waives in support

11:26:42 AM Ms. Bruns waives close
11:26:48 AM roll call
11:26:53 AM CS/SB 142 reported favorably
11:27:07 AM SB 1090 by Senator Altman
11:27:19 AM Selene Bruns explains bill
11:27:28 AM H. Lee Moffitt, AAA, waives in support
11:28:16 AM Ms. Bruns waives close
11:28:21 AM roll call
11:28:25 AM SB 1090 reported favorably
11:28:45 AM CS/CS/SB 600 by Senator Latvala
11:28:58 AM Senator Latvala explains bill
11:32:31 AM Senator Ring asks question
11:32:38 AM Senator Latvala answers
11:32:48 AM Senator Ring follows up
11:33:18 AM Senator Latvala answers
11:33:34 AM Senator Diaz de la Portilla
11:34:00 AM Senator Latvala responds
11:34:23 AM Senator Diaz de la Portilla follows up
11:35:23 AM Senator Latvala responds
11:36:04 AM Senator Smith
11:36:10 AM Senator Latvala answers
11:36:51 AM Senator Smith follows up
11:37:33 AM Johnathan Fox, staff attorney, responds
11:38:24 AM Senator Gardiner asks question
11:39:22 AM Senator Latvala answers
11:40:14 AM Senator Negron responds
11:40:23 AM Senator Gardiner
11:41:30 AM Senator Sobel asks question
11:42:22 AM Senator Latvala answers
11:44:21 AM Senator Sobel follows up
11:44:31 AM Senator Latvala responds
11:45:11 AM Senator Montford asks question
11:46:03 AM Senator Latvala answers
11:46:21 AM Senator Margolis
11:47:28 AM Senator Latvala responds
11:48:15 AM Senator Margolis
11:49:00 AM Senator Latvala moves for a time certain vote on bill
11:49:14 AM Amendment 891828 by Senator Latvala
11:49:32 AM Senator Latvala explains amendment
11:50:00 AM Senator Smith asks question on amendment
11:50:12 AM Senator Latvala answers
11:50:41 AM Senator Smith follows up
11:51:30 AM Senator Latvala responds
11:51:34 AM Senator Smith with debate on amendment
11:52:29 AM Senator Latvala waives close on amendment
11:53:09 AM Amendment adopted
11:53:14 AM Amendment 580004 by Senator Latvala
11:53:24 AM Senator Latvala explains amendment
11:53:53 AM Senator Latvala waives close on amendment
11:54:02 AM Amendment adopted
11:54:16 AM Charles Milsted, AARP, waives in support
11:54:31 AM Jessica Lowe-Minor, League of Women Voters of Florida, waives in support
11:54:42 AM Brad Ashwell speaks on bill
11:54:59 AM Paul Lux, State Assoc. of Supervisor of Elections, speaks on bill
11:56:22 AM Senator Smith speaks on bill
11:56:57 AM Senator Latvala moves to CS
11:57:07 AM Senator Latvala waives close
11:57:23 AM roll call
11:57:32 AM CS/CS/CS/SB 600 reported favorably
11:58:14 AM Senator Negron moves to vote on previous bills
11:58:27 AM Senator Smith moves we rise