

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Stargel, Chair
Senator Braynon, Vice Chair

MEETING DATE: Wednesday, February 6, 2013

TIME: 3:00 —5:00 p.m.

PLACE: 301 Senate Office Building

MEMBERS: Senator Stargel, Chair; Senator Braynon, Vice Chair; Senators Detert, Flores, Galvano, Gibson, Legg, Sachs, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 286 Negron (Identical H 575)	Design Professionals; Providing that certain contracts executed by a business entity may specify that certain architects, interior designers, landscape architects, engineers, and surveyors may not be held individually liable for negligence in the performance of professional services provided under those contracts; specifying that a contract that prohibits individual liability must meet certain requirements, etc. RI 02/06/2013 Favorable JU CA	Favorable Yeas 8 Nays 0
2	SB 328 Latvala (Identical H 39)	Public Accountancy; Revising provisions for the distribution of scholarships under the Certified Public Accountant Education Minority Assistance Program; revising the annual maximum expenditures and frequency of distribution of moneys for the scholarships; providing a peer review requirement for the license renewal of certain firms engaged in the practice of public accounting; authorizing the Board of Accountancy to establish a peer review oversight committee, etc. RI 02/06/2013 Fav/CS AP	Fav/CS Yeas 9 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 286

INTRODUCER: Senator Negron

SUBJECT: Design Professionals

DATE: February 6, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.			JU	
3.			CA	
4.				
5.				
6.				

I. Summary:

The bill would permit business entities, including corporations, partnerships, firms, and self-employed individuals, to limit by contract the liability of individual employees or agents of that business for negligence arising from the performance of professional services under a contract. For the liability limitation to apply, the following conditions must be met:

- The business entity executes the contract with a claimant or with another entity for professional services on behalf of the claimant;
- The contract includes a prominent statement that the individual employee or agent may not be held liable;
- The individual employee or agent is not a party to the contract;
- The business entity maintains professional liability insurance required by the contract;
- The conduct by the design professional giving rise to the damages occurs within the course and scope of the contract; and
- The harm is solely economic and the harm does not extend to persons or property beyond the contract.

The bill amends the current liability provisions for engineers, surveyors and mappers, architects and interior designers, and landscape architects to specifically reference the limitation of liability provision created under the bill.

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

This bill amends the following sections of the Florida Statutes: 471.023, 472.021, 481.219, 481.319, 558.002. The bill creates section 558.0035, Florida Statutes.

II. Present Situation:

Personal Liability for Professional Services

Section 621.07, F.S., provides for the personal liability of an officer, agent, member, manager, or employee of a corporation or limited liability company with regard to negligence, wrongful acts, or misconduct committed by that person while rendering professional services. It provides that the limited liability provided to professional service corporations and limited liability companies shall not:

be interpreted to abolish, repeal, modify, restrict, or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct; provided, however, that any officer, agent, member, manager, or employee of a corporation or limited liability company organized under this act shall be personally liable and accountable only for negligent or wrongful acts or misconduct committed by that person, or by any person under that person's direct supervision and control, while rendering professional service on behalf of the corporation or limited liability company to the person for whom such professional services were being rendered; and provided further that the personal liability of shareholders of a corporation, or members of a limited liability company, organized under this act, in their capacity as shareholders or members of such corporation or limited liability company, shall be no greater in any aspect than that of a shareholder-employee of a corporation organized under chapter 607 or a member-employee of a limited liability company organized under chapter 608. The corporation or limited liability company shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers, agents, members, managers, or employees while they are engaged on behalf of the corporation or limited liability company in the rendering of professional services.

Chapter 558, F.S.--Construction Defects

Chapter 558, F.S., is intended to provide an alternative dispute resolution process that would reduce the need for litigation.¹ Chapter 558, F.S., provides procedures that claimants must follow before initiating litigation regarding construction defects. It provides for notice and an opportunity to cure. Before the property owner may sue a contractor, the property owner is required to notify the contractor of the defect and to give the contractor the opportunity to examine the defect. If the contractor agrees that the defect exists, the contractor is given a reasonable opportunity to repair the defect or make some other offer of settlement. If the parties still disagree, the matter may then go to court. "In more practical terms, it is intended to allow

¹ Chapter 2003-49, L.O.F. The legislative finding with regard to this chapter provides that it is beneficial to have an alternative method to resolve construction disputes that would reduce the need for litigation while protecting the rights of homeowners. Section 558.001, F.S.

both claimants and participants to design and construction to resolve alleged defects before both sides run to the courthouse and spend a pile of money on lawyers.”²

Section 558.002(3), F.S., defines the term “claimant” to mean:

a property owner, including a subsequent purchaser or association, who asserts a claim for damages against a contractor, subcontractor, supplier, or design professional concerning a construction defect or a subsequent owner who asserts a claim for indemnification for such damages. The term does not include a contractor, subcontractor, supplier, or design professional.

Section 558.002(7), F.S., defines the term “design professional” to mean “a person, as defined in s. 1.01, licensed in this state as an architect, interior designer, landscape architect, engineer, or surveyor.”³

Economic Loss Rule

The economic loss rule is “a judicially created doctrine that sets forth the circumstances under which a tort action is prohibited if the only damages suffered are economic losses.”⁴ Under the economic loss rule, economic damages may not be recovered in a negligence action if the damages are not accompanied by physical property damage or bodily injury.⁵ This rule “bars a plaintiff from bringing tort claims to recover pure economic damages arising from a breach of contract cause of action absent personal injury or property damages.”⁶ As a result, where the relationship between the plaintiff and the defendant is derived in contract, and the plaintiff cannot prove a tort independent of some contractual breach, the economic loss rule bars recovery on any noncontract claims.⁷

The Florida Supreme Court defined economic losses as “damages for inadequate value, costs of repair and replacement of the defective product, or consequent loss of profits, without any claim of personal injury or damage to other property.”⁸ An economic loss includes “disappointed economic expectations,” i.e., the loss of the benefit of the bargain. Courts have found that such losses are more appropriately protected by contract law, rather than by tort law.⁹ To recover damages under tort law, “there must be a showing of harm above and beyond disappointed expectations. A buyer’s desire to enjoy the benefit of his bargain is not an interest that tort law traditionally protects.”¹⁰

² Leiby and Lesser, *How to Comply with Chapter 558 Florida Statutes: Current Challenges and Future Changes*, The Florida Bar Journal (Feb. 2009).

³ Section 725.08(4), F.S., also defines the term “design professional” to mean “an individual or entity licensed by the state who holds a current certificate of registration under chapter 481 to practice architecture or landscape architecture, under chapter 472 to practice land surveying and mapping, or under chapter 471 to practice engineering, and who enters into a professional services contract.”

⁴ *Indemnity Ins. Co. of N. Am. v. Am. Aviation, Inc.*, 891 So. 2d 532, 536 (Fla. 2004).

⁵ 17 FLA. JUR. 2D *Damages* s. 36 (2010).

⁶ *Id.*

⁷ *Id.*

⁸ *Casa Clara Condominium Ass’n, Inc. v. Charley Toppino and Sons, Inc.*, 620 So. 2d 1244, 1246 (Fla. 1993) (quoting *Economic Loss in Products Liability Jurisprudence*, 66 COLUM. L. REV. 917, 918 (1966)).

⁹ *Id.*

¹⁰ *Id.* (quoting *Redarowicz v. Ohlendorf*, 441 N.E.2d 324, 327 (Ill. 1982)).

In *Casa Clara*, the Florida Supreme Court applied the economic loss rule to bar a negligence claim¹¹ by homeowners against a concrete supplier with whom the homeowners were not in privity. The court held that “[i]f a house causes economic disappointment by not meeting a purchaser’s expectations, the resulting failure to receive the benefit of the bargain is a core concern of contract, not tort, law.”¹² The court noted that there were other protections for homeowners, such as statutory warranties, the general warranty of habitability, the duty of sellers to disclose defects, the ability of purchasers to inspect houses for defects, and the homebuyers’ power to bargain over price.¹³

The distinction between contract law and tort law is relevant to the remedies that can be attained. Tort law compensates people for personal injury or property damage caused by tortious conduct, without regard to a contract. Contract law enforces expectancy interests created by an agreement between parties. Tort remedies may award plaintiffs greater damages and tort plaintiffs may be able to avoid the conditions of the contract,¹⁴ while “contract principles [are] more appropriate than tort principles for resolving economic loss without an accompanying physical injury or property damage.”¹⁵

Recognizing the different interests that tort and contract law are intended to protect, the Florida Supreme Court also stated that:

[t]his is the basic difference between contract law, which protects expectations, and tort law, which is determined by the duty owed to an injured party. For recovery in tort “there must be a showing of harm above and beyond disappointed expectations. A buyer’s desire to enjoy the benefit of his bargain is not an interest that tort law traditionally protects.”¹⁶

Economic Loss Rule and Design Professionals

In *Moransais v. Heathman*,¹⁷ the Florida Supreme Court considered the application of the economic loss rule to a professional malpractice claim brought by a homeowner (plaintiff) against licensed engineers (defendants) who made a pre-purchase inspection and allegedly failed to detect and disclose defects in the condition of the house. The plaintiff had contracted with a professional engineering corporation to perform the home inspection services, and the contract did not name the defendants who actually conducted the inspection as parties to the contract.

The court considered the following two questions:

¹¹ *Casa Clara* at 1246. In this case, the condominium association’s claims against the defendant included breach of common law implied warranty, products liability, negligence, and violation of the building code.

¹² *Id.* at 1247 (citing *East River Steamship Corp. v. Transamerica Delaval, Inc.* 476 U.S. 858, 870 (1986)).

¹³ *Id.* at 1247.

¹⁴ *Id.* at 1245 (citing William L. Prosser, *The Borderland of Tort and Contract in Selected Topics on the Law of Torts*, 380, 425 (1953)).

¹⁵ *Florida Power & Light Co. v. Westinghouse Elec. Corp.*, 510 So. 2d 899, 902 (Fla. 1987).

¹⁶ *Casa Clara*, 620 So. 2d at 1246.

¹⁷ *Moransais v. Heathman*, 744 So. 2d 973 (Fla. 1999).

- Where a purchaser of a home contracts with an engineering corporation, does the purchaser have a cause of action for professional malpractice against an employee of the engineering corporation who performed the engineering services?
- Does the economic loss rule bar a claim for professional malpractice against the individual engineer who performed the inspection of the residence where no personal injury or property damage resulted?

The court held that home purchasers have a cause of action for professional malpractice against an employee of the engineering corporation who conducts a home inspection but with whom the home purchaser is not in privity of contract.¹⁸ The court concluded that professional malpractice and negligence claims are not barred by the economic loss rule. The court's holding was based on two principal reasons:

- Florida's common law and statutory scheme recognizes tort claims against professionals for negligence based on the professional's violation of a duty of care to the injured person.
- The economic loss rule is not intended to apply to professionals who negligently perform their duties.

The court stated that Florida's common law provides that persons who are:

injured by another's negligence may maintain an action against the other person based on that other person's violation of a duty of due care to the injured person. Further, where the negligent party is a professional, the law imposes a duty to perform the requested services in accordance with the standard of care used by similar professionals in the community under similar circumstances.¹⁹

In addition to Florida's common law, the court relied on the two-year statute of limitations for professional malpractice in s. 95.11(4)(a), F.S. It also relied on s. 621.07, F.S., which provides that professional employees of a corporation may be held individually liable for any negligence committed while rendering professional services, to support its conclusion that the fact that both of the engineer defendants were employees of a corporation did not shield them from liability.

The court found that engineers were professionals within the meaning of s. 95.11, F.S., noting that a profession is "any vocation requiring at a minimum a four-year college degree before licensing is possible in Florida."²⁰ The court also noted that ss. 471.023 and 621.07, F.S., indicate an intent to hold licensed engineers as professionals in a corporation or partnership personally liable for their negligent acts.

¹⁸ Privity of contract is defined as: the relationship between the parties to a contract, allowing them to sue each other but preventing a third party from doing so. The requirement of privity has been relaxed under modern laws and doctrines of implied warranty and strict liability, which allow a third-party beneficiary or other foreseeable user to sue the seller of a defective product. *Blacks Law Dictionary* (9th Edition).

¹⁹ *Moransais* at 975-76.

²⁰ *Id.* at 976 (citing *Garden v. Frier*, 602 So. 2d 1273, 1275 (Fla. 1992)).

Regarding the economic loss rule, the court noted that the rule has not eliminated causes of action premised upon torts that are independent of the contract.²¹ It also held that the rule was not intended to bar well-established common law causes of action, such as those for neglect in providing professional services.²² The court stated that the economic loss rule was primarily intended to limit product liability claims, and that it should generally be limited to that context “or situations where the policy considerations are substantially identical to those underlying the product liability-type analysis.”²³ Noting that actions against professionals often involve only economic loss without any personal or property damage, the court stated that extending the economic loss rule to tort cases against professionals “would effectively extinguish such causes of action.”²⁴

Third Party Liability Limitations in Contracts

Generally, Florida law recognizes limitation of liability clauses in contracts and permits third party beneficiaries to enforce a limitation of liability clause. For example, in *Florida Power and Light Company v. Mid-Valley*,²⁵ Florida Power and Light Company (FPL) sued Brown & Root, Inc. (Brown & Root), an engineering firm, and one of its engineers for negligence in the design, engineering, surveying, and construction of an embankment associated with a cooling water reservoir. Brown & Root and its employee engineer were not a party to the contract. The parties to the contract were FPL and “Mid-Valley, Inc. (Mid-Valley), which was a wholly-owned subsidiary of Brown & Root. The case was brought in Federal court.

The contract included a limitation of liability clause to the effect that the engineer would not be held “liable for any indirect, special or consequential loss or *damage* arising out of the performance of services” under the contract, including damages caused by the engineer’s negligence.²⁶ The contract also provided that Mid-Valley would indemnify the engineer and hold the engineer harmless from any damages or liability.

In *Florida Power and Light Company v. Mid-Valley*, the Federal Court of Appeals for the Eleventh Circuit found that Brown & Root and the engineer were intended third party beneficiaries of the contract and, as such, were entitled to the protection of the limitation of liability clause and the indemnity provision in the contract.

However, in *Witt v. La Gorce Country Club, Inc.*,²⁷ the Florida Third District Court of Appeal held that the limitation of liability clause in the contract was invalid and unenforceable as to a geologist in his capacity as a licensed professional. Consequently, the court refused to apply the economic loss rule to bar the claim. The court relied on the holding in *Moransais*, and also noted that, as a professional geologist, Witt was specifically subject to personal liability for negligence, misconduct, or wrongful acts under s. 492.111, F.S. Consequently, the court rejected the application of the economic loss rule to a professional malpractice claim against a licensed professional geologist.

²¹ *Id.* at 981 (citing *HTP, Ltd. v. Lineas Aereas Costarricenses, S.A.*, 685 So. 2d 1238 (Fla. 1996)).

²² *Id.* at 983.

²³ *Id.*

²⁴ *Id.*

²⁵ *Florida Power and Light Company v. Mid-Valley, Inc.*, 763 F.2d 1316 (11th Cir. 1985).

²⁶ *Id.* at 1318.

²⁷ *Witt v. La Gorce Country Club, Inc.*, 2009 WL 1606437 (Fla. 3d DCA 2009).

In *Witt*, the plaintiff, La Gorce Country Club, Inc., entered into a design-build contract for a reverse osmosis system with ITT Industries, Inc. (ITT), and Gerald M. Witt and Associates, Inc. (GMWA), which was the company of the defendant professional geologist Gerald M. Witt (Witt). The contract provided a limitation of liability to the benefit of Witt, who in his individual capacity, was not a party to the contract. The reverse osmosis system ultimately failed after numerous technical problems during the design and building of the system, and the plaintiff filed suit.²⁸

In effect, the *Witt* decision is an exception to the rule, as expressed in *Florida Power and Light Company v. Mid-Valley*, that third party beneficiaries of a contract are entitled protection of a liability limitation clause in a contract. Under *Witt*, professionals are exempt from that protection. In refusing to recognize the contract's liability limitation and to apply the economic loss rule to limit Witt's liability, the court noted that:

claims of professional negligence operate outside of the contract. Because a professional negligence claim exists and operates outside of a professional services contract, it would be inapposite to limit such a remedy to the confines of the very document outside of which it was intended to operate.²⁹

Engineers

Professional engineers are regulated by the Board of Professional Engineers within the Department of Business and Professional Regulation (department), which enforces and administers the provisions of ch. 471, F.S. Existing law provides the following education and experience requirements for a person to qualify to take the examination for licensure as an engineer:

- Graduating from an approved engineering curriculum of four years or more in a school, college, or university which has been approved by the board and has a record of four years of active engineering experience of a character indicating the competence to be in responsible charge of engineering;
- Graduating from an approved engineering technology curriculum of four years or more in a school, college, or university within the State University System, having been enrolled or having graduated prior to July 1, 1979, and having had a record of four years of active engineering experience of a character indicating competence to be in responsible charge of engineering; or
- Having, in lieu of the education and experience requirements, 10 years or more of active engineering work of a character indicating that the applicant is competent to be placed in responsible charge of engineering. This provision does not apply unless the person

²⁸ The claims against Gerald M. Witt, the defendant professional geologist, and his codefendant corporations included: (1) fraud in the inducement against codefendant ITT Industries, Inc. (ITT); (2) aiding and abetting fraud in the inducement by Witt and his company Gerald M. Witt and Associates, Inc. (GMWA); (3) violation of the Florida Deceptive and Unfair Trade Practices Act in ss. 501.201-501.213, F.S., by ITT and GMWA; (4) professional malpractice by Witt and GMWA; and (5) breach of the contract by GMWA. *Witt* 2009 WL at 2.

²⁹ *Witt* at 4.

notifies the department before July 1, 1984, that she or he was engaged in such work on July 1, 1981.³⁰

Engineer Liability

Licensed engineers may practice through a business organization, including a partnership, corporation, or other legal entity offering professional services.³¹ Current law establishes the liability of engineers when practicing through a business organization, including the liability of partners in a partnership and of the business organization's officers, agents, or employees for negligence, misconduct, or wrongful acts.³² Section 471.023(3), F.S., provides that the "fact that a licensed engineer practices through a business organization does not relieve the licensee from personal liability for negligence, misconduct, or wrongful acts committed by him or her." With regard to the extent of a licensed engineer's liability for his or her own negligence, misconduct, or wrongful acts while employed by a business organization, s. 471.023(3), F.S., also provides that:

any officer, agent, or employee of a business organization other than a partnership shall be personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by him or her or committed by any person under his or her direct supervision and control, while rendering professional services on behalf of the business organization.

Partnerships and all partners are also jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity.³³ A business organization is liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on its behalf in the rendering of professional services.³⁴

Surveyors and Mappers

Surveyors and mappers are regulated by the Board of Professional Surveyors and Mappers within the Department of Agriculture and Consumer Services, which enforces and administers the provisions of ch. 472, F.S.³⁵ Existing law provides the following education and experience requirements for a person to qualify to take the examination for licensure as a surveyor and mapper:

- Receiving a degree in surveying and mapping of four years or more in a surveying and mapping degree program from a college or university recognized by the board and having a specific experience record of four or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.

³⁰ Section 471.013(1), F.S.

³¹ Section 471.023, F.S.

³² *Id.*

³³ Section 471.023(3), F.S.

³⁴ *Id.*

³⁵ The regulation of surveyors and mappers was transferred from the Department of Business and Professional Regulation to the Department of Agriculture and Consumer Services by ch. 2009-66, L.O.F.

- Being a graduate of a four-year course of study, other than in surveying and mapping, at an accredited college or university and having a specific experience record of six or more years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, five years of which are of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.³⁶

Surveyors and Mappers Liability

Licensed surveyors and mappers may practice through a corporation or partnership. Current law establishes the liability of surveyors and mappers when practicing through a corporation or partnership.³⁷ “The fact that any registered surveyor and mapper practices through a corporation or partnership shall not relieve the registrant from personal liability for negligence, misconduct, or wrongful acts committed by him or her.”³⁸

In regard to the extent of a licensed mapper and surveyor’s liability for his or her own negligence, misconduct, or wrongful acts while employed by a business organization, s. 472.021(3), F.S., also provides that:

any officer, agent, or employee of a business organization other than a partnership shall be personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by him or her or committed by any person under his or her direct supervision and control while rendering professional services on behalf of the business organization.

Partnerships and all partners are also jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity.³⁹ A business organization is liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on its behalf in the rendering of professional services.⁴⁰

Architects and Interior Designers

Architects and interior designers are regulated by the Board of Architecture and Interior Design within the Department of Business and Professional Regulation, which enforces and administers the provisions of part I of ch. 481, F.S. Existing law provides the following education and experience requirements for a person to qualify to take the examination for licensure as an architect:

- Graduating from a school or college of architecture accredited by the National Architectural Accreditation Board, or from an approved architectural curriculum at an unaccredited school or college of architecture approved by the board; and
- Completing one year of the internship experience required by s. 481.211(1), F.S.⁴¹

³⁶ Section 472.013(2), F.S.

³⁷ Section 472.021(3), F.S.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Section 481.209(1), F.S.

Current law provides the following education and experience requirements for a person to qualify to take the examination for licensure as an interior designer:

- Graduating from a board-approved interior design program of five years or more and completing one year of diversified interior design experience;
- Graduating from a board-approved interior design program of four years or more and completing two years of diversified interior design experience;
- Completing at least three years of a board-approved interior design curriculum and completing three years of diversified interior design experience; or
- Graduating from an interior design program of at least two years and completing four years of diversified interior design experience.⁴²

Architects and Interior Designers Liability

Licensees may offer architecture and interior design services through a corporation, limited liability company, or partnership.⁴³ The corporation, limited liability company, or partnership shall not be relieved of responsibility for the conduct or acts of its agents, employees, or officers.⁴⁴

With regard to the extent of a licensed architect's or interior designer's personal liability, s. 481.219(11), F.S., also provides that:

the architect who signs and seals the construction documents and instruments of service shall be liable for the professional services performed, and the interior designer who signs and seals the interior design drawings, plans, or specifications shall be liable for the professional services performed.

Corporations, limited liability companies, and partnerships are not relieved of responsibility for the conduct or acts of their agents, employees, or officers.⁴⁵

Landscape Architects

Landscape architects are regulated by the Board of Landscape Architecture within the Department of Business and Professional Regulation, which enforces and administers the provisions of part II of ch. 481, F.S. Existing law provides the following education and experience requirements for a person to qualify to take the examination for licensure as a landscape architect:

- Completing a board-approved professional degree program in landscape architecture; or
- Having six years of actual practical experience in landscape architectural work of a grade and character satisfactory to the board.⁴⁶

⁴² Section 481.209(2), F.S.

⁴³ Section 481.219, F.S.

⁴⁴ Section 481.219(11), F.S.

⁴⁵ *Id.*

⁴⁶ Section 481.309(1), F.S.

Practicing landscape architecture through a corporation or partnership does not relieve any landscape architect from personal liability for his or her professional acts.⁴⁷

Landscape Architects Liability

Licensees may offer landscape architect services through a corporation or partnership.⁴⁸ Section 481.319(6), F.S., provides that:

the fact that registered landscape architects practice landscape architecture through a corporation or partnership as provided in this section shall not relieve any landscape architect from personal liability for his or her professional acts.

III. Effect of Proposed Changes:

The bill creates s. 558.0035, F.S., to permit business entities to limit by contract the liability of individual employees or agents of that business for negligence arising from the performance of professional services under a contract.

The bill amends s. 558.002(3), F.S., to define the term “business entity” to mean “any corporation, limited liability company, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.” It does not appear that this definition is limited to the design professionals referenced in the bill, i.e., the engineers, surveyors and mappers, architects, interior designers, and landscape architects.

For the liability limitation to apply, the following conditions must be met:

- The business entity executes the contract with a claimant or with another entity for professional services on behalf of the claimant;
- The contract includes a prominent statement that the individual employee or agent may not be held liable;
- The individual employee or agent is not a party to the contract;
- The business entity maintains professional liability insurance required by the contract;
- The conduct by the design professional giving rise to the damages occurs within the course and scope of the contract; and
- The harm is solely economic and the harm does not extend to persons or property beyond the contract.

In regards to the condition in s. 558.0035(1), F.S., that the business entity must have executed the contract with another entity for professional services on behalf of the claimant,⁴⁹ this condition would apply to contracts between the business entity and a person other than the property owner. For example, a contract for services between an architectural firm (the business entity) and an

⁴⁷ Section 481.319(6), F.S.

⁴⁸ Section 481.319, F.S.

⁴⁹ A “claimant” is defined as “a property owner, including a subsequent purchaser or association, who asserts a claim for damages against a contractor, subcontractor, supplier, or design professional concerning a construction defect or a subsequent owner who asserts a claim for indemnification for such damages. The term does not include a contractor, subcontractor, supplier, or design professional.”

engineering firm or subcontractors for services needed to satisfy the business entities contract with the claimant.

Regarding the condition in s. 558.0035(4), F.S., that the business entity must maintain professional liability required under the contract, the bill does not require that the contract must require that the business entity maintain professional liability insurance. The extent to which the contract requires the maintenance of professional liability insurance coverage would be limited to the contract as negotiated by the parties. It appears that, if the contract is silent on the issue of liability insurance, then the business would not be required to maintain such insurance in order for the liability limitation to apply.

Regarding the condition in s. 558.0035(5), F.S., that the conduct by the design professional giving rise to the damages must have occurred within the course and scope of the contract, it is not clear if this condition applies when the conduct giving rise to the damages was performed by a person who was not a design professional. Although s. 558.035, F.S., refers to the “performance of professional services,” subsection (5) is the only provision in this section that refers to the design professional.

Regarding the condition in s. 558.0035(6), F.S., that the harm is solely economic and does not extend to persons or property not subject to the contract, it is not clear whether the term “not subject to the contract” is limited to the person or persons who are a party to the contract. To the extent that other persons may have an interest, including an economic interest, in the benefits of the contract without being a party to the contract, those persons appear not to be barred from suing the business entity’s employees and agents for negligence. For example, a condominium association which was not a party to the contract between the business entity and the condominium developer would not be subject to the limitation.

If a claimant has entered into a contract with a business entity and the contract meets the conditions set forth in the bill, a claimant may be barred from potential tort claims for recovery of economic damages resulting from a construction defect⁵⁰ that may be filed by a claimant against a professional employed by the business entity or acting as its agent.. The contract would protect the employees and agents of business entities from tort negligence claims for damages resulting from the performance of the professional services that are the subject of the contract. In effect, the economic loss rule could be applied to such persons, whether professionals or not. But in regards to professionals, the bill may extend the application of the rule to them as was rejected in the *Witt* case.

⁵⁰ A “construction defect” is defined in s. 558.02(5), F.S., as a deficiency in, or a deficiency arising out of, the design, specifications, surveying, planning, supervision, observation of construction, or construction, repair, alteration, or remodeling of real property resulting from:

- Defective material, products, or components used in the construction or remodeling;
- A violation of the applicable codes in effect at the time of construction or remodeling which gives rise to the cause of action;
- A failure of the design of real property to meet the applicable professional standards of care at the time of governmental approval; or
- A failure to construct or remodel real property in accordance with accepted trade standards for good and workmanlike construction at the time of construction.

The effect of the bill's tort liability limitation is also to apply the economic loss rule to bar claims by claimants against the business entity's employees and agents who provided the professional design services under contract. Therefore, a claimant could not bring a negligence claim against a professional who is a business entity's employee or agent for a harm that is based purely on economic loss. The claimant would be limited to a lawsuit based on contract claims against the business entity.

The bill amends the current liability provisions in ss. 471.023(3), F.S. (engineers), 472.021(3), F.S. (surveyors and mappers), 481.219(11), F.S. (architects and interior designers), and 481.319(6), F.S. (landscape architects) to specifically reference the limitation of liability provision created in ch. 558, F.S., under the bill.

The bill 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.

D. Other Constitutional Issues:

Section 21, Art. I, of the Florida Constitution provides the constitutional right of access to court. It provides:

The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

In *Johnson v. R. H. Donnelly Company*, the Florida Supreme Court held that the constitutional right of "access to courts guarantees the continuation of common law causes of action and those causes of action may be altered only if there is a reasonable substitution which protects the persons protected by the common law remedy."⁵¹ In *Kluger v. White*, the Florida Supreme Court also held that the Legislature cannot abolish a common law cause of action "unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."⁵²

⁵¹ *Johnson v. R. H. Donnelly Co.*, 402 So. 2d 518, 520 (Fla. 1981).

⁵² *Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973).

As noted earlier, in *Moransais v. Heathman*,⁵³ the Florida Supreme Court stated that Florida's common law and statutory scheme recognizes tort claims against professionals for negligence based on the professional's violation of a duty of care to injured persons.

As noted earlier, in *Witt v. La Gorce Country Club, Inc.*,⁵⁴ the Third District Court of Appeal held that a limitation of liability clause in the contract for the benefit of a third part professional geologist was invalid and unenforceable as to a licensed professional. Consequently, the court refused to apply the economic loss rule to bar a negligence claim against the professional under the principle that claims of professional liability operate outside of the contract and cannot be waived.

By limiting negligence claims against licensed engineers, surveyors and mappers, architects, and landscape architects, the bill may implicate concerns relating to the constitutional right of access to courts to the extent that the bill limits causes of actions for professional negligence and professional malpractice. However, the effect of the bill is to not bar such claims in all instances. It would permit a claimant, as defined in s. 558.02(3), F.S., and a business entity, as defined in the bill, to waive by contract professional liability of the business entity's employees and agents. In effect, the bill would reject the holding in *Witt*.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill limits the tort claims against a business entity's, as defined in the bill, employees and agents, including licensed engineers, surveyors and mappers, architects, and landscape architects (design professionals). The design professionals affected by the bill may experience lower costs for professional liability insurance and may charge lower prices to their customers for their professional services as a consequence of the liability limitations that may be provided in a contract.

Parties to a contract who experience an economic loss that may be attributable to the professional negligence or professional malpractice of a design professional or by an employee or agent of a business entity may be limited to the remedies available under contract law, e.g., they may be barred from claims for negligence that resulted solely in economic harm to the extent that the contract does not authorize such claims.

C. Government Sector Impact:

None.

⁵³ *Moransais v. Heathman*, 744 So. 2d 973, 975, 976 (Fla. 1999).

⁵⁴ *Witt v. La Gorce Country Club, Inc.*, 2009 WL 1606437 (Fla. 3d DCA 2009).

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.



818522

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/06/2013	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Thrasher) recommended the following:

Senate Amendment

Delete lines 25 - 26
and insert:
firm, or franchise, whether fictitiously named or

By Senator Negrón

32-00134C-13

2013286

A bill to be entitled

An act relating to design professionals; amending s. 558.002, F.S.; providing and renumbering definitions; creating s. 558.0035, F.S.; providing that certain contracts executed by a business entity may specify that certain architects, interior designers, landscape architects, engineers, and surveyors may not be held individually liable for negligence in the performance of professional services provided under those contracts; specifying that a contract that prohibits individual liability must meet certain requirements; amending ss. 471.023, 472.021, 481.219, and 481.319, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Present subsections (3) through (11) of section 558.002, Florida Statutes, are renumbered as subsections (4) through (12), respectively, and new subsection (3) is added to that section, to read:

558.002 Definitions.—As used in this chapter, the term:

(3) "Business entity" means any corporation, limited liability company, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

Section 2. Section 558.0035, Florida Statutes, is created to read:

Page 1 of 5

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

32-00134C-13

2013286

558.0035 Contractual limitation on liability.—A contract executed by a business entity may provide that an individual employee or agent of that business entity may not be held individually liable for negligence arising from the performance of professional services under the contract, on condition that the following requirements are met:

(1) The business entity executes the contract with a claimant or with another entity for the provision of professional services on behalf of the claimant;

(2) The contract includes a prominent statement, in uppercase font that is at least 5 point sizes larger than the rest of the text, that, pursuant to this act, an individual employee or agent may not be held individually liable for negligence;

(3) The contract does not name an individual employee or agent as a party to the contract;

(4) The business entity maintains professional liability insurance required under the contract;

(5) The conduct of the design professional giving rise to the damages occurs within the course and scope of the contract; and

(6) The harm is solely economic in nature and does not extend to persons or property not subject to the contract.

Section 3. Subsection (3) of section 471.023, Florida Statutes, is amended to read:

471.023 Certification of business organizations.—

(3) Except as provided in s. 558.0035, the fact that a licensed engineer practices through a business organization does not relieve the licensee from personal liability for negligence,

Page 2 of 5

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

32-00134C-13

2013286__

59 misconduct, or wrongful acts committed by him or her.
 60 Partnerships and all partners shall be jointly and severally
 61 liable for the negligence, misconduct, or wrongful acts
 62 committed by their agents, employees, or partners while acting
 63 in a professional capacity. Any officer, agent, or employee of a
 64 business organization other than a partnership shall be
 65 personally liable and accountable only for negligent acts,
 66 wrongful acts, or misconduct committed by him or her or
 67 committed by any person under his or her direct supervision and
 68 control, while rendering professional services on behalf of the
 69 business organization. The personal liability of a shareholder
 70 or owner of a business organization, in his or her capacity as
 71 shareholder or owner, shall be no greater than that of a
 72 shareholder-employee of a corporation incorporated under chapter
 73 607. The business organization shall be liable up to the full
 74 value of its property for any negligent acts, wrongful acts, or
 75 misconduct committed by any of its officers, agents, or
 76 employees while they are engaged on its behalf in the rendering
 77 of professional services.

78 Section 4. Subsection (3) of section 472.021, Florida
 79 Statutes, is amended to read:

80 472.021 Certification of partnerships and corporations.—

81 (3) Except as provided in s. 558.0035, the fact that any
 82 registered surveyor and mapper practices through a corporation
 83 or partnership ~~does shall~~ not relieve the registrant from
 84 personal liability for negligence, misconduct, or wrongful acts
 85 committed by him or her. Partnerships and all partners shall be
 86 jointly and severally liable for the negligence, misconduct, or
 87 wrongful acts committed by their agents, employees, or partners

Page 3 of 5

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

32-00134C-13

2013286__

88 while acting in a professional capacity. ~~An~~ Any officer, agent,
 89 or employee of a business organization other than a partnership
 90 shall be personally liable and accountable only for negligent
 91 acts, wrongful acts, or misconduct committed by him or her or
 92 committed by a ~~any~~ person under his or her direct supervision
 93 and control while rendering professional services on behalf of
 94 the business organization. The personal liability of a
 95 shareholder or owner of a business organization, in his or her
 96 capacity as shareholder or owner, shall be no greater than that
 97 of a shareholder-employee of a corporation incorporated under
 98 chapter 607. The business organization shall be liable up to the
 99 full value of its property for any negligent acts, wrongful
 100 acts, or misconduct committed by any of its officers, agents, or
 101 employees while they are engaged on its behalf in the rendering
 102 of professional services.

103 Section 5. Subsection (11) of section 481.219, Florida
 104 Statutes, is amended to read:

105 481.219 Certification of partnerships, limited liability
 106 companies, and corporations.—

107 (11) No corporation, limited liability company, or
 108 partnership shall be relieved of responsibility for the conduct
 109 or acts of its agents, employees, or officers by reason of its
 110 compliance with this section. However, except as provided in s.
 111 558.0035, the architect who signs and seals the construction
 112 documents and instruments of service shall be liable for the
 113 professional services performed, and the interior designer who
 114 signs and seals the interior design drawings, plans, or
 115 specifications shall be liable for the professional services
 116 performed.

Page 4 of 5

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

32-00134C-13

2013286__

117 Section 6. Subsection (6) of section 481.319, Florida
118 Statutes, is amended to read:

119 481.319 Corporate and partnership practice of landscape
120 architecture; certificate of authorization.—

121 (6) Except as provided in s. 558.0035, the fact that a
122 registered landscape architect practices ~~architects practice~~
123 landscape architecture through a corporation or partnership as
124 provided in this section does shall not relieve the any
125 landscape architect from personal liability for his or her
126 professional acts.

127 Section 7. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/13

Meeting Date

Topic Professional Services Liability

Bill Number SB 286
(if applicable)

Name Richard Minichiello

Amendment Barcode _____
(if applicable)

Job Title Principal

Address 10080 NW 53 St.
Street

Phone 954-684-4336

Sunrise Fl. 33071
City State Zip

E-mail Raminichiello@Terracon.com

Speaking: For Against Information

Representing Terracon

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/13
Meeting Date

Topic CONTRACTS

Bill Number SB 286
(if applicable)

Name MIKE HUEY

Amendment Barcode _____
(if applicable)

Job Title ATTORNEY

Address 1125 CARRIAGE RD
Street
TLH FL 32312
City State Zip

Phone _____

E-mail _____

Speaking: For Against Information

Representing FL. ASSN OF THE AMERICAN INSTITUTE OF ARCHITECTS

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.

_____ 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)

02/06/13

Meeting Date

Topic Design Professionals Bill Number SB 286

(if applicable)

Name Eli Nortelus Amendment Barcode _____

(if applicable)

Job Title Public Policy Advisor, Akerman Senterfitt

Address 106 E. College Ave Phone 850-224-9634

Street

Tallahassee

FL

32301

E-mail eli.nortelus@akerman.com

City

State

Zip

Speaking: For Against Information

Representing American Society of Interior Designers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/13
Meeting Date

Topic Contract Design Professionals

Bill Number 286
(if applicable)

Name Frank Rudd

Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address 125 S. Gadsden St

Phone 850.224.7121

^{Street}
Tallahassee FL 32
_{City} _{State} _{Zip}

E-mail frudd@fleng.org

Speaking: For Against Information

Representing Florida Engineering Society

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb
Meeting Date

Topic Design Professionals bill Bill Number SB 286
(if applicable)

Name Joe Adams Amendment Barcode _____
(if applicable)

Job Title Attorney & Managing Shareholder of Ft Myers + Naples

Address Becker & Poliakoff, PA Phone 239-433-7707
Street 24241 Carissa Commerce Ct
Ft Myers, FL *City State Zip*
E-mail jadams@becker-poliakoff.com

Speaking: For Against Information

Representing Community Association Leadership Lobby (CALL)

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-6-2013

Meeting Date

Topic DESIGN PROFESSIONAL CONTRACTS

Bill Number SB 286
(if applicable)

Name ANDREW CUMMINGS, P.E.

Amendment Barcode _____
(if applicable)

Job Title VICE PRESIDENT

Address 10060 SKINNER LAKE DR.

Phone 904.265.3030

Street

JACKSONVILLE FL 32246

City

State

Zip

E-mail ACUMMINGS@CWIENG.COM

Speaking: For Against Information

Representing FLORIDA ENGINEERING SOCIETY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/13

Meeting Date

Topic Design Prof. Liability Bill Number 286
(if applicable)

Name Chris Lory Amendment Barcode _____
(if applicable)

Job Title Director of Strategic Projects

Address 610 Crescent Executive Ct Phone 407-805-0355
Street

Lake Mary FL 34761
City State Zip

E-mail clory@hntb.com

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/13

Meeting Date

Topic Design Professional Liability

Bill Number 286
(if applicable)

Name Warren Husband

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 10909

Phone 850 205 9000

Street

Tallahassee FL 32302

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Fla. Associated General Contractors 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-6-13

Meeting Date

Topic Design Professional Liability

Bill Number SB 286
(if applicable)

Name MARI HERBRANK

Amendment Barcode _____
(if applicable)

Job Title VICE PRESIDENT

Address 113 COLLEGE AVE. SUITE 200

Phone 850-514-5183

TALLAHASSEE, FL 32301
City State Zip

E-mail Khebrank@aol.com

Speaking: For Against Information

Representing FLORIDA HOME BUILDERS 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/2012

Meeting Date

Topic Design Professional Contracts

Bill Number 286
(if applicable)

Name Jason B. Matson, P.E.

Amendment Barcode _____
(if applicable)

Job Title Senior Vice President

Address 10711 SW Westlawn Blvd

Phone 772-345-0909

Street

Port Saint Lucie

FL

34987

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Florida Engineering Society / Florida Institute of Consulting Engineers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

This form is part of the public record for this meeting

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-6-13

Meeting Date

Topic DESIGN PROFESSIONALS

Bill Number SB 296
(if applicable)

Name DAVID DANIEL

Amendment Barcode _____
(if applicable)

Job Title _____

Address 311 EAST PARK AVE

Phone 224-5081

Street

TALLAHASSEE

FL

32301

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing FLORIDA SURVEYING AND MAPPING SOCIETY

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 is a part of the public record for this meeting

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/13

Meeting Date

Topic Design Professional

Bill Number 286
(if applicable)

Name Dana Gillette

Amendment Barcode _____
(if applicable)

Job Title Principal Associate - Erdman Anthony

Address 17069 Gulf Pine Cir
Street

Phone 561-790-1063

Wellington FL 33414
City State Zip

E-mail Gillette@ErdmanAnthony.com

Speaking: For Against Information

Representing Erdman Anthony, Fla. Engineering Society, self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

6 FEB 2013
Meeting Date

Topic DESIGN PROFESSIONALS Bill Number 286
Name GERALD M. WARD, P.E. Amendment Barcode _____ (if applicable)
Job Title PROFESSIONAL ENGINEER - SOLE PROPRIETOR (if applicable)

Address P.O. Box 1041 PO Box 6121 Phone 561/863-1215
Street Riviera Beach Key West E-mail wardgm@gate.net
City 334 *State* 33041 *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)

2/6/13

Meeting Date

Topic Design Professional Liability

Bill Number 286
(if applicable)

Name TRAVIS MOORE

Amendment Barcode _____
(if applicable)

Job Title _____

Address P.O. Box 781
Street

Phone 727.421.6902

Largo, FL 33779
City State Zip

E-mail MOORETA@tampabay.rr.com

Speaking: For Against Information

Representing Community Associations Institute - FLA

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/13

Meeting Date

Topic Design

Bill Number 286
(if applicable)

Name Richard Outzen

Amendment Barcode _____
(if applicable)

Job Title Legislative Counsel

Address P.O. Box 14038

Phone FSU 222-0000

Street

City

State

Zip

Tallahassee, FL 32302

E-mail rick@outzenassociates.com

Speaking: For Against Information

Representing Associated Builders & Contractors of 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.

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 Regulated Industries

BILL: CS/SB 328

INTRODUCER: Regulated Industries Committee and Senator Latvala

SUBJECT: Public Accountancy

DATE: February 8, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Fav/CS
2.			AP	
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:

This bill increases the frequency of disbursements for approved scholarships funded by a portion of license fees set by the Board of Accountancy and collected by the Department of Business and Professional Regulation for the Certified Public Accountant Education Minority Assistance Program from once per year to twice per year and increases the amount available for scholarships from \$100,000.00 to \$200,000.00 per year.

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

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

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

This bill substantially amends sections 473.3065 and 473.311, Florida Statutes. This bill creates section 473.3125, Florida Statutes.

II. Present Situation:

The Board of Accountancy (board) within the Department of Business and Professional Regulation (department) is the agency charged with regulating the practice of public accountancy.¹ The Division of Certified Public Accounting (division) performs for the board all services concerning the enforcement of ch. 473, F.S., including, but not limited to, recordkeeping services, examination services, legal services, and investigative services, and those services in ch. 455, F.S., necessary to perform the board's duties under the chapter. The offices of the division are located in Gainesville.²

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

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

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

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

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

¹ Section 473.303, F.S.

² See s. 20.165(2)(c)2., F.S.

paragraph shall be construed to permit the board to adopt rules that have the result of prohibiting licensees employed by unlicensed firms from preparing financial statements as authorized by this paragraph.

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

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

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

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

Education Minority Assistance Program

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

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

The board is authorized to and has adopted rules in Chapter 61H1-38, Florida Administrative Code, for administration of the program, including eligibility criteria for receipt of a scholarship, (including financial need, ethnic, gender, or racial minority status

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

pursuant to s. 288.703(4), F.S., and scholastic ability and performance), scholarship application procedures, amounts in which scholarships may be provided, the total amount that may be provided, the time frame for payments or partial payments, and criteria for how scholarship funds may be expended, the total amount of scholarships that can be made each year, and the minimum balance that must be maintained in the program account.

Determinations made by the board regarding recipients of scholarship moneys are not considered agency action for purposes of pursuing remedies available under the Administrative Procedure Act, ch. 120, F.S., and it is unlawful for any person or agent of such person to knowingly file with the board any notice, statement, or other document which is false or which contains any material misstatement of fact.

The Certified Public Accountant Education Minority Assistance Advisory Council assists the board in administering the program. The council must be diverse and representative of the gender, ethnic, and racial categories set forth in s. 288.703(4), F.S., and consists of five licensed Florida CPAs selected by the board. One member serves as chair of the council, one must be a representative of the National Association of Black Accountants, one must be a representative of the Cuban American CPA Association, and two are selected at large. At least one member of the council must be a woman.⁴

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

Peer Review

According to the Florida Institute of Certified Public Accountants (FICPA), the American Institute of Certified Public Accountants (AICPA) requires its member firms to undergo a peer review every three years. A peer review is a periodic external review of a firm's quality control system in accounting and auditing and is also known as the AICPA's practice monitoring program. Members of the AICPA engaged in the practice of public accounting are required to practice in a firm that is enrolled in an approved practice-monitoring program such as the Peer Review Program. The FICPA administers the AICPA Peer Review Program for firms that are members of AICPA and for firms that are not members of AICPA. The program is designed to be educational for firms in public accounting to further enhance the quality in their performance

⁴ Section 473.3065(6)(a), F.S.

of accounting and auditing work. The program also allows for firms to communicate with their fellow peers on the objectives of the accounting profession.⁵

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

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

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

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

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

An accounting and auditing practice for the purposes of these standards is defined as all engagements covered by Statements on Auditing Standards (SASs); Statements on Standards for Accounting and Review Services (SSARS) (see interpretations); Statements on Standards for Attestation Engagements (SSAEs); *Government Auditing Standards* (the Yellow Book) issued by the U.S. Government Accountability Office; and

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

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

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

audits of non-SEC issuers performed pursuant to the standards of the Public Company Accounting Oversight Board (PCAOB) (see interpretations).⁸

According to the FICPA, not all CPA firms will be required to have a peer review conducted on their firm. CPA firms that limit their practices to tax or consulting services would not be required to have a peer review, as the requirement only applies to firms that perform attest services, including compilations. According to the FICPA, there will be no impact on CPAs in private industry, education, or government because the requirement applies only to CPAs in public practice (accounting and auditing practices).

Further, according to the FICPA, peer review is not an entirely new requirement for most Florida CPA firms performing attest and compilation services, as the American Institute of Certified Public Accountants (AICPA) has had a peer review program for its more than 30,000 members since 1989, and the approximate 75% of FICPA members that are also AICPA members are required to participate in that program. In addition, the Government Accounting Office has a peer review requirement for CPA firms that perform audits under government auditing standards.⁹

According to the FICPA, under the current standards of the AICPA regarding peer review, the FICPA administers the AICPA Peer Review Program for both AICPA members and non-member firms.

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

III. Effect of Proposed Changes:

The bill modifies the Certified Public Accountant Education Minority Assistance Program to allow disbursements for approved scholarships twice per year (previously once per year) and authorizes the Department of Business and Professional Regulation to spend up to \$200,000 per year (increased from \$100,000.00 per year) for the Certified Public Accountant Education Minority Assistance Program.

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

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

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

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

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact

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

Sample peer review costs for sole practitioner firms

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

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

C. Government Sector Impact:

The rules adopted by the Florida Board of Accountancy (board) regarding the Certified Public Accountant Minority Assistance Program will require review and revision as needed in order to conform to any modification of the frequency of scholarship awards and of the amount available for awarding of approved scholarships.

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

According to the Department of Business and Professional Regulation (department), the fiscal impact of the bill:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that a member of the peer review oversight committee would have to be a member of a CPA firm that has participated in peer review and has received a rating of “pass” on its most recent peer review. This provision assumes that the board rules will follow the standards and terminology of the AICPA regarding these ratings.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 by Regulated Industries on February 6, 2013:

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

- B. **Amendments:**

None.

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

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



761242

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2013	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Detert) recommended the following:

1 Senate Amendment (with title amendment)

2
3 Delete lines 46 - 52

4 and insert:

5 (2) The department shall adopt rules establishing a

6
7 Between lines 78 and 79

8 insert:

9 (4) Effective January 1, 2015, a sole proprietor,
10 partnership, corporation, limited liability company, or other
11 firm licensed under s. 473.3101 and engaged in the practice of
12 public accounting as defined in s. 473.302(8)(a) must be



761242

13 enrolled in a peer review program.

14

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

16 And the title is amended as follows:

17 Delete lines 8 - 14

18 and insert:

19 scholarships; amending s. 473.311, F.S.; clarifying
20 provisions; creating s. 473.3125, F.S.; providing
21 definitions; requiring the Board of Accountancy to
22 adopt rules for peer review programs; authorizing the
23 board to establish a peer review oversight committee;
24 requiring certain licensees to be enrolled in a peer
25 review program by a certain date;

By Senator Latvala

20-00265A-13

2013328__

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

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

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

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

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

Page 1 of 3

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

20-00265A-13

2013328__

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

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

40 473.311 Renewal of license.—

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

46 (2) Effective January 1, 2015, the department shall renew a
 47 license issued under s. 473.3101 upon certification by the board
 48 that the sole proprietor, partnership, corporation, limited
 49 liability company, or other firm engaged in the practice of
 50 public accounting as defined in s. 473.302(8)(a) is enrolled in
 51 a peer review program.

52 ~~(3)(2)~~ The department shall adopt rules establishing a
 53 procedure for the biennial renewal of licenses issued pursuant
 54 to this section.

55 Section 3. Section 473.3125, Florida Statutes, is created
 56 to read:

57 473.3125 Peer review.—

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

Page 2 of 3

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

20-00265A-13

2013328__

59 (a) "Licensee" means a sole proprietor, partnership,
60 corporation, limited liability company, or any other firm
61 engaged in the practice of public accounting as defined in s.
62 473.302(8) (a) that is required to be licensed under s. 473.3101.

63 (b) "Peer review" means the study, appraisal, or review by
64 one or more independent certified public accountants of one or
65 more aspects of the professional work of a licensee.

66 (2) The board shall adopt rules establishing minimum
67 standards for peer review programs, including, but not limited
68 to, standards for administering, performing, and reporting peer
69 reviews. The board shall also adopt rules establishing minimum
70 criteria for the board's approval of one or more organizations
71 that facilitate and administer peer review programs.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR JACK LATVALA
20th District

February 6, 2013

The Honorable Senator Kelli Stargel, Chair
Senate Committee on Regulated Industries
330 Knott Building
Tallahassee, FL 32399-1100

Dear Chair Stargel:

This letter is to request permission for Jennifer Wilson, my Legislative Assistant, to present SB 328 on my behalf today during the meeting of the Senate Committee on Regulated Industries. My attendance is otherwise required at the meeting of the Senate Committee on Environmental Preservation and Conservation.

Thank you for your consideration.

Sincerely,

Jack Latvala
State Senator
District 20



cc: Booter Imhof, Staff Director; Lynn Koon, Administrative Assistant

REPLY TO:

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

Senate's Website: www.flsenate.gov

Don Gaetz
President of the Senate

Garrett Richter
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/13
Meeting Date

Topic Public Accountancy

Bill Number SB 328
(if applicable)

Name David White

Amendment Barcode _____
(if applicable)

Job Title Vice - Chair of the FICPA Young CPA Committee

Address 2019 Ted Hines Ct.
Street

Phone 850-320-5788

Tallahassee, FL 32308
City State Zip

E-mail djwhite@crpa.com

Speaking: For Against Information

Representing The FICPA Young CPA Committee

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/6/13

Meeting Date

Topic Public Accountability

Bill Number SB 328
(if applicable)

Name Ashley Fagan

Amendment Barcode _____
(if applicable)

Job Title Senior Manager + Committee Chair

Address 4651 Mimosas Ter. #1203

Phone 954-847-3986

Street
Coconut Creek FL 33073
City State Zip

E-mail ashleymaher@kang.com

Speaking: For Against Information

Representing Young CPAs Committee of FICPA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-6-13

Meeting Date

Topic Act Related to Public Accountancy

Bill Number SB 328
(if applicable)

Name Deborah Curry

Amendment Barcode _____
(if applicable)

Job Title CEO of Florida Institute of CPAs

Address 325 W College Ave

Phone 850 545 3656

Tallahassee FL 32301
City State Zip

E-mail CurryD@FICPA.org

Speaking: For Against Information

Representing Florida Institute of CPAs

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Gaming, *Vice Chair*
Agriculture
Appropriations Subcommittee on Education
Appropriations Subcommittee on Finance and Tax
Education
Military Affairs, Space, and Domestic Security
Regulated Industries

SENATOR MARIA LORTS SACHS

Democratic Leader Pro Tempore
34th District

January 28, 2013

The Honorable Don Gaetz
President of the Senate
420 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear President Gaetz,

Because of a death in the family I will not be able to attend committee meetings the week of February 4, 2013. I will be returning to the office on Thursday February 7th.

Pursuant to the Rules of the Senate every committee chair will be contacted regarding my absence. Thank you.

Very truly yours,

Two handwritten signatures in black ink. The first signature is "Maria Sachs" and the second is "Don Gaetz".

Senator Maria Sachs
District 34

REPLY TO:

- 955 NW 17th Avenue, Suite E, Delray, Florida 33445 (561) 279-1427
- 216 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5034

Senate's Website: www.flsenate.gov

 DON GAETZ

 GARRETT RICHTER

CourtSmart Tag Report

Room: SB 301
Case: Senate Regulated Industries Committee

Type:
Judge:

Started: 2/6/2013 3:01:03 PM
Ends: 2/6/2013 4:05:27 PM **Length:** 01:04:25

3:01:16 PM Meeting called to order
3:01:20 PM Roll call
3:01:54 PM Comments by the chair
3:02:22 PM SB 328 by Senator Latvala
3:02:34 PM Bill presented by Jennifer Wilson
3:03:32 PM Amendment by Sen. Detert
3:03:49 PM Amendment adopted
3:04:51 PM Moved as a CS
3:05:18 PM CS/SB 328 -Passes
3:05:51 PM Recording Paused
3:30:07 PM Recording Resumed
3:31:09 PM SB 286 by Senator Negrón
3:31:26 PM Senator Negrón to explain the bill
3:34:35 PM Late File Amendment - Withdrawn
3:35:27 PM Joe Adams, Community Assoc. Leadership Lobby
3:38:22 PM Warren Husband, FL Associated General Contractors
3:41:06 PM Senator Stargel questioning
3:43:24 PM Travis Moore, Community Assoc. Institute of Florida
3:44:19 PM Rick Watson, Associated Builders
3:47:31 PM Mike Huey, FL Assoc. of American Institute of Architects
3:52:13 PM Brian Pitts, Justice-2-Jesus
3:55:58 PM Senator Gibson questioning
3:56:09 PM Senator Negrón responding
3:59:27 PM Senator Thrasher Commenting
4:01:31 PM Senator Braynon commenting
4:01:56 PM Senator Galvano commenting
4:03:03 PM Senator Negrón commenting
4:05:06 PM SB 286 - Passes
4:05:16 PM Meeting adjourned